TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 664. 266.

RICHARD S. WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED NOVEMBER 28, 1896.

(16,440.)

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(16,440.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 661.

RICHARD S. WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 19, 1897.

1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States, northern district of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States and Richard S. Williams, manifest errors hath happened, to the great damage of the said Richard S. Williams, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 23d day of November, 1896, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

2 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 23d day of September, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal of the U. S. District Court, Northern Dist. of California.]

SOUTHARD HOFFMAN,
Clerk of the District Court of the United States,
Northern District of California.

The foregoing writ of error is hereby allowed this 23d day of September, 1896, at San Francisco, in the State of California.

WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

3 [Endorsed:] No. 3267. U. S. dist. court, northern district of California. The United States *vs.* Richard S. Williams. Writ of error. Filed Sept. 23rd, 1896. Southard Hoffman, clerk, by ——— ———, deputy clerk. The said plaintiff in error also lodged in the clerk's office of said district court, on the said 23d day of September, 1896, for the defendant in error, a true copy of said writ of error. Southard Hoffman, clerk.

4 (*Return to Writ of Error.*)

The answer of the judge of the district court of the United States for the northern district of California.

The record and proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States, within mentioned, at the day and place within contained in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[Seal of the U. S. District Court, Northern Dist. of California.]

SOUTHARD HOFFMAN,
Clerk U. S. District Court, Northern Dist. of California,
By J. S. MANLEY, *Deputy Clerk.*

5 *Citation on Writ of Error.*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the Capitol, in the city of Washington, on the 23d day of November, 1896, pursuant to a writ of error lodged in the clerk's office of the district court of the United States, northern district of California, wherein Richard S. Williams is plaintiff in error and you are defendant in error, to show cause, if any there be, why the final judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. W. W. Morrow, judge of the district court of the United States, northern district of California, this 23d day of September, 1896, at San Francisco, California.

WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

This is to certify that on the 23d day of September, 1896, the foregoing citation was served upon the undersigned by delivery of a true copy thereof to him, and admission of said service is hereby made.

BARCLAY HENLEY,
Special Counsel of the U. S.
HENRY S. FOOTE,
Attorney for the United States.

(Endorsed:) Filed September 23d, 1896. Southard Hoffman, clerk.

6 In the District Court of the United States in and for the Northern District of California.

[On the margin:] Sec. 3169, Rev. Stat., sub. 1 & 2, and sec. 23, act of Feb'y 8, 1875, vol. 1, 2nd ed., supp. Rev. Stat.

At a stated term of said court, begun and holden at the city and county of San Francisco, within and for the northern district of California, on the first Monday in February, in the year of our Lord one thousand eight hundred and ninety-six—

The grand jurors of the United States of America within and for the district aforesaid on their oath present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the said United States, duly appointed and acting under the authority of the law of the said United States, and being then and there a person designated as Chinese inspector at said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, did then and there, as such officer, willfully, knowingly, corruptly, and feloniously, for the sake of gain and contrary to the duty of his said office and by color thereof, ask, demand, receive, extort, and take of one Wong Sam, a Chinese

7 person, a certain sum of money, to wit, one hundred dollars, which said sum of money was not due to him, the said Richard S. Williams, and which the said Richard S. Williams was not then and there or at all, by virtue of his said office, entitled to ask, demand, receive, or take of said Wong Sam or any other person—that is to say, that on the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-five, there arrived at the port of San Francisco aforesaid from a foreign port or place, to wit, the port of Hong Kong, in the Empire of China, a male person of Chinese descent, to wit, one Wong Lin Choy, who claimed to the collector of customs that he was entitled to land, be, and remain within the United States on the ground that he was a native born of said United States.

That thereafter such proceedings were had and taken before said collector of customs in accordance with law that the said Wong Lin Choy was by said collector of customs adjudged to be entitled to and permitted to land at said port as a native born of said United States of Chinese descent, and to be and remain in the said United States; that thereafter and after the said Wong Lin Choy was adjudged to be permitted to land at said port of San Francisco by said collector of customs, to wit, on the eighteenth day of Septem-

ber, in the year of our Lord one thousand eight hundred and ninety-five, at said city and county of San Francisco, State and northern district of California, the said Richard S. Williams corruptly and extorsively, for the sake of gain and contrary to the duty of his said office and under color thereof, did extort, receive, and take of said Wong Sam, who was then and there interested in the application or claim of said Wong Lin Choy as aforesaid, a sum of money,
to wit, the sum of one hundred dollars as aforesaid, the
8 said Richard S. Williams, under color of his said office, having previously, to wit, on the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-five, at said city and county, State and district aforesaid, feloniously and corruptly obtain- and exacted a promise from said Wong Sam for the payment thereof by him to him, the said Richard S. Williams, by then and there falsely and corruptly representing to the said Wong Sam that without the payment thereof to him, the said Richard S. Williams, the said Wong Lin Choy would not be permitted to land at said port, be or remain within the United States, but would be returned to said foreign port whence he came—

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

Second Count.

And the grand jurors aforesaid on their oath aforesaid do further present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the United States, duly appointed and acting under the authority of the law of the said United States, and being then and there a person designated as Chinese inspector of said port of San Francisco, and by virtue of his said office being then and
there authorized, directed, and required to aid and assist the
9 collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, not regarding the duties of his office, willfully and corruptly did then and there and under color of his said office take and receive of one Wong Sam, who was then and there interested in the claim of one Wong Lin Choy to be permitted to land at the port of San Francisco aforesaid, a sum of money, to wit, one hundred dollars, as and for a fee, compensation, and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of the application of said Wong Lin Choy, who then and there claimed

to the collector of customs of said port to be entitled to land at said port of San Francisco from a foreign port, to wit, the port of Hong Kong, in the Empire of China, and to be and remain in the United States under the claim that he was a native born of the said United States, which said application was then and there pending and under investigation before said collector of customs as aforesaid, whereas in truth and in fact no fee, compensation, or reward was then or at any other time due or owing from the said Wong Sam or any other person to the said Richard S. Williams for such services or any services of him, the said Richard S. Williams, in connection with said matter or at all, nor was he, the said Richard S. Williams, entitled to the same by law—

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United
10 States of America in such case made and provided.

HENRY S. FOOTE,
United States Attorney.

Names of witnesses examined before the said grand jury on finding the foregoing indictment: Chin Duck, H. C. Dibble.

(Endorsed:) A true bill. John F. Merrill, foreman. Presented and filed in open court this 7th day of April, A. D. 1896. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

11 UNITED STATES OF AMERICA, } ss.:
Northern District of California, }

To the marshal of the United States of America for the district of California and his deputies or any or either of them, Greeting:

Whereas, at a district court of the United States of America for the district of California, begun and held at the city and county of San Francisco, within and for the district aforesaid, on the 7th day of April, in the year of our Lord one thousand eight hundred and ninety-six, *Richard S. Williams* the grand jurors in and for the said district brought into the said court a true bill of indictment against Richard S. Williams for extortion and receiving a fee, compensation, or reward, &c., as by the said indictment now remaining on file and of record in said court will more fully appear; to which indictment the said Richard S. Williams has not yet appeared or pleaded:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Richard S. Williams and him bring before the said court, at the United States district court-room, in the city and county of San Francisco, to answer the information aforesaid.

Witness the Hon. Wm. W. Morrow, judge of the said district court, and the seal thereof, at the city and county of San Francisco, the 7th day of April, A. D. 1896.

Attest: SOUTHARD HOFFMAN, *Clerk*,
By J. S. MANLEY, *Deputy Clerk*.

H. S. FOOTE, Esq.,
U. S. Attorney.

11½ UNITED STATES OF AMERICA, }
Northern District of California. }

MARSHAL'S OFFICE.

In obedience to the warrant I have the body of the said Richard S. Williams before the honorable the district court of the United States in and for the northern district of California this 7th day of April, A. D. 189–.

BARRY BALDWIN,
U. S. Marshal,
By J. D. HARRIS,
Deputy U. S. Marshal.

(Endorsed:) Filed April 7th, 1896. Southard Hoffman, clerk.

12 In the United States District Court, Northern District of California.

THE UNITED STATES OF AMERICA }
vs.
RICHARD S. WILLIAMS. }

Now comes said defendant and demurs to the indictment herein and saith as follows:

I.

a. The first count of said indictment does not state facts sufficient to constitute a public offense nor any offense against the laws of the United States.

b. That said first count is uncertain, because it does not state nor can it be determined therefrom—

1. Whether any fee is or is not allowed by law to be charged and received at any time by the said Chinese inspector for any service relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco.

2. What services are alleged to have been claimed to have been rendered by defendant as compensation for which said sum of one hundred dollars is alleged to have been received by defendant.

3. Whether defendant is or is not a subordinate, deputy, or clerk of the said collector of customs.

c. It is ambiguous, for the same reasons stated in paragraph I, subdivision *b* hereof.

13 *d.* It is unintelligible, for the same reasons stated in paragraph I, subdivision *b* hereof.

II.

a. The second count in said indictment does not state facts sufficient to constitute a public offense nor any offense against the laws of the United States.

b. That said second count is uncertain, because it does not state nor can it be determined therefrom—

1. Whether any fee is or is not allowed to be charged and received at any time by the said Chinese inspector for any services relating to the coming of Chinese persons or persons of Chinese descent from foreign ports to the United States at said port of San Francisco.

2. What it is alleged the said fee, compensation, or reward was paid to said defendant for, nor what the services were or to whom were rendered, for which it is alleged said fee, compensation, or reward *were* received by defendant.

3. Whether defendant is or is not a subordinate, deputy, or clerk of said collector of customs.

c. It is ambiguous, for the same reasons stated in paragraph II, subdivision *b* hereof.

d. It is unintelligible, for the same reasons stated in paragraph II, subdivision *b* hereof.

III.

That said indictment as a whole does not state facts sufficient to constitute a public offense nor any offense against the laws of the United States.

14 Wherefore defendant prays judgment that he may be dismissed and discharged from said indictment and go hence without day.

T. C. COOGAN,
Attorney for Defendant.

Service of a copy of the within demurrer admitted this 20th day of April, 1896.

H. S. FOOTE, *U. S. Att'y.*

(Endorsed:) Filed April 20th, 1896. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

15 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 24th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. —.

In this case the demurrer to the indictment this day came on for hearing and was duly argued by T. C. Coogan, Esq., attorney for defendant, in support thereof, and by Bert Schlesinger, Esq., assistant U. S. attorney, in opposition thereto, and submitted to the court for consideration and decision.

16 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 28th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. —.

The demurrer to the indictment herein having been argued and submitted to the court for consideration and decision, now, after due consideration had thereon, it is by the court ordered that said demurrer be, and the same is hereby, overruled, and, on motion of Bert Schlesinger, Esq., assistant U. S. attorney, it is ordered that the defendant appear in court on Tuesday, May 5th, 1896, for arraignment.

17 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 7th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. —.

In this case, the defendant being present in open court, with T. C. Coogan, Esq., and L. I. Mowry, Esq., his attorney-, by order of the court, on motion of Bert Schlesinger, Esq., assistant U. S. attorney, the defendant was duly arraigned upon the indictment on file herein against him, and to which indictment he then and there pleaded not guilty.

18 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 10th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. —.

The motion of the U. S. attorney to consolidate the indictment herein with the indictment in case numbered 3268—United States *vs.* Richard S. Williams—having been heretofore submitted to the court for decision, now, after due consideration had thereon, it is by

the court ordered that the indictment herein be, and the same is hereby, consolidated with the indictment in case numbered 3268—United States *vs.* Richard S. Williams.

19 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 19th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } No. 3267, 3268, Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys, being present in open court, Bert Schlesinger, Esq., assistant U. S. attorney, and Barclay Henley, Esq., special assistant U. S. attorney, being also present, on motion of Mr. Schlesinger, it is ordered that the trial hereof do now proceed; and thereupon the court proceeded to impanel a jury to try this case as follows: C. S. Benedict, accepted and sworn; Joseph Simonson, accepted and sworn; Bryon Mauzy, challenged peremptorily by defendant and excused; Henry J. Crocker, accepted and sworn; J. F. Cunningham, accepted and sworn; Charles A. Warren, chal-enged peremptorily by U. S. and excused; H. N. Tilden, accepted and sworn; Augustus F. Lawton, accepted and sworn; Isaac Y. Doane, challenged peremptorily by defendant and excused; Alfred A. Gore, challenged peremptorily by defendant and excused; Moses J. Frank, challenged peremptorily by defendant and excused; Orlando H. Bogart, accepted and sworn; W. B. Bradford, accepted and sworn; P. S. Teller, accepted and sworn; W. T. Y. Schenck, accepted and sworn; Benjamin F. Harville, accepted and sworn; J. S. Emery, challenged peremptorily by defendant and excused; Christian Engelbretson, accepted and sworn; and, the jury being completed and composed of the following-named persons: C. S. Benedict, H. N. Tilden, P. S. Teller, Joseph Simonson, Augustus F. Lawton, W. T. Y. Schenck, Henry J. Crocker, Orlando H. Bogart, Benjamin F. Harville, J. F. Cunningham, W. B. Bradford, and Christian Engelbretson, on motion of Mr. Mowry, it is ordered that all witnesses be, and they are hereby, placed under the rule. Mr. Henley thereupon made opening statement on behalf of the United States, and, by agreement of the attorneys, Carlton Rickards was duly sworn as the interpreter of the Chinese language in this case. Mr. Henley called John Lynch and Dong Tung, who were duly sworn and examined as witnesses on behalf of the United States; and pending the examination of Dong Tung, who was ordered to be in attendance upon the court on Thursday, August 20th, 1896, at eleven o'clock a. m., the further trial hereof was continued until Thursday, August 20th, 1896.

20 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 20th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA } No. —. Indictments Nos. 3267,
vs. } 3268, Consolidated for Trial.
RICHARD S. WILLIAMS. }

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys, the jury sworn to try this case, Barclay Henly, Esq., special assistant U. S. attorney, and Bert Schlesinger, as-sistant U. S. attorney, being present in open court, the trial hereof was resumed.

Dong Tung, the witness under examination on behalf of the United States, having been ordered to be and appear in court this day at eleven o'clock a. m., and failing to appear as commanded, was duly called at the door of the court-room, and, failing to appear or answer, it is ordered that an attachment issue for the said Dong Tung, to have him before the court forthwith to show cause why he should not be punished for contempt of court.

And it appearing that J. J. Tobin has been duly subpœnaed to appear in court at eleven o'clock this day as a witness on behalf of the United States, and upon being duly called at the door of the court-room, and failing to appear or answer, it is ordered that an attachment issue for the said J. J. Tobin, to have him before the court forthwith to show cause why he should not be punished for contempt of court.

Mr. Henley then called Wong Sam, who was duly sworn and examined as a witness on behalf of the United States, and pending the examination of said Wong Sam the court took a recess until two o'clock p. m. of this day, and commanding the said Wong Sam to return and be in attendance at two o'clock p. m.

And at the reconvening of the court at two o'clock p. m., the said Wong Sam failing to appear or answer upon being duly called, it is ordered that an attachment issue for the said Wong Sam, to have him before the court forthwith, to show cause why he should not be punished for contempt of court.

The U. S. marshal having produced the body of J. J. Tobin in open court, and the said J. J. Tobin having purged himself of any contempt by the court, ordered that the said attachment for said Tobin be discharged, and that the said Tobin be released from custody.

Mr. Henley then called Henry C. Dibble, who was duly sworn and examined as a witness on behalf of the United States, and after examination the witness was excused from attendance, the defendant reserving the right for further cross-examination.

The U. S. marshal having produced the body of Dong Tung in open court, in obedience to the attachment issued, it is by the court

ordered that the said Dong Tung be committed to the custody of the U. S. marshal pending the matter of his contempt of court.

The U. S. marshal having produced the body of Wong Sam in open court, in obedience to the attachment issued, it is by the court ordered that the said Wong Sam be committed to the custody of the U. S. marshal pending the matter of his contempt of court.

21 The cross-examination of Wong Sam was thereupon proceeded with, and — temporarily excused the defendant, reserving the right to further cross-examine the said Wong Sam.

And the said Wong Sam having purged himself of any contempt, *by* the court ordered that the said attachment for said Wong Sam be discharged, and that the said Wong Sam be released from custody.

The examination of Dong Tung was thereupon resumed and concluded.

Mr. Henley then called Chin Deck, who was duly sworn and examined as a witness on behalf of the United States, and pending the examination of Chin Deck the further trial hereof was continued until Friday, August 21st, 1896.

22 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 21st day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS.	No. 3267, 3268, as Consolidated for Trial.

In this case the defendant, with T. C. Coogan, Esq., and L. I. Mowry, Esq., his attorneys; the jury sworn to try this case, Barclay Henley, Esq., special assistant U. S. attorney, and Bert Schlesinger, Esq., assistant U. S. attorney, being present in open court, the trial hereof was resumed. The examination of Chin Deck, a witness on behalf of the United States, was resumed and concluded. Called J. J. Tobin, Chin Ying, and Wong Kew Kim, who were duly sworn and examined as witnesses on behalf of the United States; and pending the examination of Wong Kew Kim the further trial hereof was continued until Monday, August 24th, 1896.

23 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 24th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS.
} Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases, being present in open court, the trial hereof was resumed. The examination of Wong Kew Kim, a witness on behalf of the United States, was resumed and concluded. Mr. Henley recalled Wong Sam, who was further examined as a witness on behalf of the United States, and called David D. Jones, who was duly sworn and examined as a witness on behalf of the United States, and recalled Chin Ying, who was further examined as a witness on behalf of the United States. Mr. Henley then called Wong Gim, and it appearing that Wong Gim has been duly subpœnaed to attend as a witness on behalf of the United States, and upon being duly called at the door of the court-room, and failing to appear or answer, it is ordered that an attachment issue for the said Wong Gim requiring the U. S. marshal to have the said Wong Gim before the court forthwith, to show cause why he should not be punished for contempt of court; and thereupon the further trial hereof was *was* continued until Tuesday, August 25th, 1896.

24 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 25th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS.
} Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Henley called William W. Van Pelt and George C. Bartlett, who were duly sworn and examined as witnesses on behalf of the United States, and recalled J. J. Tobin and John Lynch, who were further examined as witnesses on behalf of the United States, and called Washington Irving, J. Philip Amos, Daniel Einstein, George W. Lee, and Patrick Fitzsimmons, who were duly sworn and examined as witnesses on behalf of the United States; and thereupon the further trial hereof was continued until Wednesday, August 26th, 1896.

25 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 26th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Henley called Geo. E. Lawrence, E. B. Jerome, who were duly sworn and examined as witnesses on behalf of the United States, and recalled John Lynch, who was further examined as a witness on behalf of the United States, and Wong Sam was recalled for further cross-examination; and thereupon the Government rested; and thereupon Mr. Mowry made opening statement on behalf of the defendant and called Ong Chee, Jow Pong Dong Wing, alias Dong Dock Bow, Chin Toy, and Hom Teung, who were duly sworn and examined as witnesses on behalf of the defendant, and pending the examination of Hom Teung the further trial hereof was continued until Thursday, August 27th, 1896.

26 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 27th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In this case the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. The examination of Hom Teung, a witness on behalf of the defendant, was resumed and concluded, and Mr. Mowry called Lim You, John Lynch, Quan Quock Wak, Chin Toy, H. S. Hutchings, A. S. Newburgh, Geo. W. Duffield, Jr., Andrew Hornsman, J. S. Manley, A. L. Farish, Samuel J. Rudell, and Thomas F. McGrath, who were duly sworn and examined as witnesses on behalf of the defendant; and thereupon the further trial hereof was continued until Monday, August 31st, 1896.

And by the court ordered that witnesses be, and they are hereby, excused from attendance upon court until Monday, August 31st, 1896, at eleven o'clock a. m.

27 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 31st day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barc*a*ly Henley, Esq., and Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Mowry called John R. Fairchild, John T. Cosgrove, Gee Gam, John H. Wise, Gong Tyng, Harry Cook, T. D. Riordan, Richard S. Williams, and Jeung Chung, who were duly sworn and examined as witnesses on behalf of the defendant, and rested. Mr. Henley called Jue Lee, John Lynch, Ng Chung Dip, Wong Ling, Wm. T. Boyce, who were duly sworn and examined as witnesses on behalf of the United States in rebuttal.

And it appearing that Chas. L. Weller has been duly subpœnaed to appear in court as a witness on behalf of the United States, and upon being duly called at the door of the court-room, and failing to appear or answer, it is ordered that an attachment issue for the said Charles L. Weller, to have him before the court forthwith to show cause why he should not be punished for contempt of court.

And later the U. S. marshal having produced the body of said Cha-. L. Weller in open court, and the said Weller having purged himself of any contempt of court, it is by the court ordered that the said attachment be, and the same is hereby, discharged and the said Weller be released from custody.

Mr. Henley thereupon called Charles L. Weller, who was duly sworn and examined as a witness on behalf of the United States in rebut-al; and thereupon the further trial hereof was continued until Tuesday, September 1st, 1896.

28 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 1st day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Schlesinger called E. H. Heacock, Benj. T. Harrison, Frederick James Masters, Ira M. Condit, J. J. Tobin, who were duly sworn and examined as witnesses on behalf of the United States in rebuttal, and rested. Mr. Mowry recalled John H. Wise, who was examined as a witness on behalf of the defendant in surrebuttal, and rested. The case was then argued by Mr. Schlesinger on behalf of the United States, and by Mr. Coogan and Mr. Mowry on behalf of the defendant, and pending the argument of Mr. Mowry the further trial hereof was continued until Wednesday, September 2d, 1896.

29 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 2nd day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try this case being present in open court, the trial hereof was resumed. Mr. Mowry proceeded with and concluded the closing argument on behalf of the defendant, and Mr. Henley proceeded and concluded his closing argument on behalf of the United States, and pending the argument of Mr. Henley the further trial hereof was continued until Thursday, September 3rd, 1896, at 10 a. m.

30 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 3rd day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with Lyman I. Mowry, Esq., his attorney; Barclay Henry, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Henry then proceeded with and concluded his argument on behalf of the United States, and the case was submitted. The court then charged the jury, who, at 11.47 a. m., retired to deliberate upon a verdict, and subsequently, at 12.20 p. m., returned into court and, upon being asked if they had agreed upon a verdict, rendered a written verdict and said: "We find Richard S. Williams, the prisoner at the bar, guilty of the charges as laid in the indictments numbered 3267 and 3268," and so said they all. On motion of Mr. Schlesinger, it is ordered that the defendant be committed to the custody of the U. S. marshal to await sentence; and further ordered that the jurors be, and they are hereby, excused from further consideration of this case, and excused from attendance until Monday, September 21st, 1896, at eleven o'clock a. m.; and on motion of Mr. Schlesinger it is ordered that the prisoner be produced in court on Thursday, September 10th, 1896, for sentence.

31 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 11th day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these case- the defendant, with Geo. D. Collins, Esq., his attorney; Barclay Henley, Esq., special assistant U. S. attorney, and Bert Schlesinger, Esq., assistant U. S. attorney, being present in open court, Mr. Schlesinger moved for judgment on the verdict, and thereupon Mr. Collins interposed a motion in arrest of judgment on the second count of each of the indictments numbered 3267 and 3268, and also a motion for a new trial herein, and said motions were thereupon duly argued by Mr. Collins in support thereof; and thereupon the further hearing of said motions *were* continued until Saturday, September 12th, 1896.

32 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Saturday, the 12th day of *Saturday*, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated.

In this case the defendant, with Geo. D. Collins, Esq., his attorney; Barclay Henley, Esq., special assistant U. S. attorney, and Bert Schlesinger, Esq., assistant U. S. attorney, being present in open court, Mr. Henley proceeded with and concluded his argument in opposition to the motion of the defendant in arrest of judgment as to the second count of each of the indictments numbered 3267 and 3268 and the motion of defendant for a new trial herein, and was followed by Mr. Collins, who made closing argument in support of said motions, and said motions were thereupon submitted to the court for consideration and decision.

33 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 22nd day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. 3267.

In this case the defendant, with George D. Collins, Esq., his attorney; Barclay Henley, Esq., special assistant U. S. attorney, and Bert Schlesinger, Esq., assistant U. S. attorney, being present in open court, the motion of defendant to arrest the judgment herein as to second count of the indictment having been heretofore submitted to the court for consideration and decision, now, after due consideration had thereon, it is by the court ordered that said motion be, and the same is hereby, allowed; and it is hereby ordered that judgement be, and the same is hereby, arrested on said second count of the indictment.

And the motion for a new trial herein having been heretofore submitted to the court for consideration and decision, now, after due consideration had thereon, it is by the court ordered that motion for a new trial herein be, and the same is hereby, denied.

The prisoner was thereupon called for sentence, and upon being asked if he had anything to say why sentence should not be pronounced upon him according to law, and nothing appearing why sentence should not be pronounced, it is by the court now here ordered and adjudged that Richard S. Williams, for feloniously, etc., extorting, etc., and taking of one Wong Sam the sum of one hundred dollars, under color of his office as Chinese inspector of the Department of the Treasury at the port of San Francisco, State of California, of which he stands convicted, be, and he is
34 hereby, sentenced to pay a fine of five thousand dollars ($5,000.00) and to be imprisoned for the term of three years, to date from September 22nd, 1896, and in default of the payment of

said fine of five thousand dollars ($5,000.00) to be further imprisoned until the same be paid or until he be otherwise discharged by due process of law.

And it is further ordered and adjudged that said sentence of imprisonment be executed upon the said Richard S. Williams until the other or further order of the court by imprisonment in the State prison of the State of California, at San Quentin, Marin county, State of California.

And to which order and judgment the defendant, by his attorney, then and there duly excepted.

35 In the District Court of the United States in and for the Northern District of California.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Two Indictments, Nos. 3267 & 3268.

Opinion on Motion in Arrest of Judgment.

Geo. D. Collins, Esq., attorney for defendant.
Barclay Henley, Esq., special attorney for the United States.
Bert Schlesinger, Esq., assistant U. S. district attorney.

MORROW, *District Judge:*

The two indictments upon which the defendant has been found guilty contain each two counts. In all four of these counts *it* is charged that the defendant was an officer of the Department of the Treasury of the United States, duly appointed and acting under the authority of the laws of the United States and designated as Chinese inspector at the port of San Francisco, and by virtue of his office authorized, directed, and required to aid and assist the collector of customs at said port in the enforcement and carrying out of the various laws and regulations of the United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco.

The indictments are founded upon section 3169 of the Revised Statutes and section 23 of the act of February 8, 1875. Section 3169 of the Revised Statutes provides that "every officer or agent appointed and acting under the authority of any revenue law
36 of the United States—

First. Who is guilty of any extortion or willful oppression under color of law; or—

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compen-sation, or reward, except as by law prescribed, for the performance of any duty, * * * shall be held guilty, etc."

Section 23 of the act of February 8, 1875 (18 Stat. at Large, 307), provides as follows: "That all acts and parts of acts imposing fines, penalities, or other punishment for offenses committed by an in-

ternal-revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever employed, appointed, or acting under the authority of any internal-revenue or customs law, or any revenue provisions of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money."

It is contended, in arrest of judgment, that neither of the indictments states a case within either of the foregoing provisions of law:

First. Because it appears that the defendant was designated and employed under the laws of the United States relating to the exclusion of Chinese laborers, and was not an officer or agent appointed and acting under the authority of any revenue law of the United States.

Second. He was not employed, appointed, or acting under the authority of any customs law of the United States.

The office of Chinese inspector is not known to the law by
37 that title, nor is the defendant so charged in the indictment.

He is charged as being an officer of the Department of the Treasury of the United States, appointed and acting under the authority of the laws of the United States, and designated as Chinese inspector. The authority for his appointment at the port of San Francisco is found in section 2606 of the Revised Statutes, providing for the appointment, at certain ports of the United States, of such number of weighers, gaugers, measurers, and inspectors as may be necessary. This section is in that title of the Revised Statutes relating to the "collection of duties upon imports." An inspector of customs is a public officer. Hooper *et al. vs.* Fifty-one Cases of Brandy, 2 Ware, 371; 12 Fed. Cas., 465.

The act of May 6, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese, provided in section 8 that the master of any vessel arriving in the United States from any foreign port or place before landing or permitting to land any Chinese passengers shall deliver and report to the collector of customs of the district in which the vessel has arrived a list of all Chinese passengers taken on board his vessel at any foreign port or place and all such passengers on board the vessel at that time, together with certain particulars as to name, etc. The list was to be sworn to by the master in the manner required by law in relation to the manifest of the cargo, and any willful refusal or neglect to comply with this requirement incurred the same penalties and forfeiture provided for a refusal or neglect to report and deliver a manifest of the cargo.

Section 9 made it the duty of the collector or his deputy to examine such Chinese before landing, comparing the certificate
38 issued under the act with the list and with the passengers, and no passenger should be allowed to land in the United States from such vessel in violation of law.

Section 10 provides that every vessel whose master should knowingly violate any of the provisions of the act should be deemed

forfeited to the United States, and should be liable to seizure and condemnation in any district of the United States into which the vessel might enter or in which she might be found. The enforcement of the provisions of this act relating to the coming of Chinese persons to the United States was thus placed in charge of the collector of customs and the officers of that department. Congress has often passed acts forbidding the immigration of particular classes of foreigners, and has committed the execution of these acts to the Secretary of the Treasury, to collectors of customs, and to inspectors acting under their authority. Nishimura Ekiu *vs.* United States, 142 U. S., 651, 659. In the several acts making appropriations for the sundry civil expenses of the Government for the year 1891 and subsequent years there has been an appropriation for the enforcement of the Chinese exclusion act, under the Treasury Department, in the following terms: "To prevent unlawful entry of Chinese into the United States, by the appointment of suitable officers to enforce the laws in relation thereto, and for the purpose of returning to China all Chinese persons found to be unlawfully within the United States."

The defendant, although appointed an inspector under the customs law, was designated and acting as an officer under the laws relating to Chinese immigration. He was a revenue officer required to perform duties not strictly of a revenue character,
39 but duties of an official character imposed upon him by law. This, I think, is sufficient to bring the defendant within the provisions of section 23 of the act of February 8, 1875, where a person appointed under the authority of a customs law and designated or acting as an officer is made subject to the fines, penalties, or other punishment imposed for offenses committed by any officer of the Treasury Department. It in effect reaches all persons appointed, employed, or acting under the authority of any revenue or customs law when acting officially in the performance of duties imposed upon them by laws, whether such duties are strictly of a revenue character or pertain to some other branch of the public service, but which Congress, for convenience or the economy of administration, has seen fit to impose upon such officers.

The motion is further directed specifically to the second counts in both indictments, on the ground that they do not charge an offense under the statute, for the reason that they do not allege that the money was extorted under color of law and because it does not appear that the compensation and reward alleged to have been received by the defendant was for the performance of any duty.

The second subdivision of section 3169 of the Revised Statutes is directed against the officer or agent "who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty." The indictment charges that the defendant "did * * * under *of* color of his said office willfully and corruptly demand, take, and receive of one Chan Ying, who was then and there interested in the claim of one Chin Shee
40 Hong to be permitted to land at the port of San Francisco,

* * * a sum of money, to wit, eighty-five dollars, as and for a fee, compensation, and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of the application of said Chin Shee Hong, who then and there claimed to the collector of customs at said port to be entitled to land at said port of San Francisco from a foreign port, * * * whereas in truth and in fact no fee, compensation, or reward was then or at any other time due or owing from the said Chan Ying or any other person to the said Richard S. Williams for such services or any services of him, the said Richard S. Williams, in connection with said matter or at all, nor was he, the said Richard S. Williams, entitled to the same by law."

With respect to the form of an indictment charging a statutory offense, "It is not always necessary that the precise words of the statute should be employed in the allegations, but their equivalents will often answer. Still the doctrine seems to be that enough of the exact words must be used to identify the statute on which the indictment is drawn, and when enough of such exact words are not used, though equivalent ones are, it will be insufficient." Bishop on Statutory Crimes, sec. 380. There is another rule which requires, in many cases and in various particulars, that the allegations of the indictment should be broader than the words of the statute on which it is drawn, that the crime may be charged with precision and certainty and every ingredient of which it is composed accurately and clearly alleged. Evans *vs.* United States, 153 U. S., 584. The two counts to which thes- objections are directed do not follow the precise words of the statute, and for the very good reason that, under the rule just stated, such words would
41 not be sufficient; but in departing from the exact words of the statute, and alleging particulars deemed necessary to describe the offense under its provisions, have equivalent words been used and has the real intent and purpose of the statute been followed? For the word "knowingly," contained in the statute, the indictment substituted the words "willfully and corruptly." Possibly these latter words may be deemed the equivalent of the word "knowingly," but this last word has a well-known technical meaning in criminal statutes, and, when so used, its omission from the indictment founded upon such a statute is in the direction of uncertainty and the want of precision. The charge in both of the second counts of the indictment is that the defendant acted under color of office in demanding, taking, and receiving a fee, compensation, and reward for his services. It is further charged that no fee, compensation, or reward was then or at any other time due or owing to the said Richard S. Williams. The act here described is therefore properly charged as having been committed under color of office. An act done under color of office is a pretense of official right, made by one who has no such right. 1 Bouvier's Dictionary, 293; Burrall *vs.* Acker, 23 Wend., 608. But it is further charged that the services of the defendant were also under color of office, while the statute now under consideration is directed against officers

and agent who demand or receive illegal compensation for "the performance of a duty." Clearly, the indictment, in departing from the words of the statute, has omitted its most material provision, and instead of charging the offense with more precision and certainty, it has charged something else. Services rendered under color of office are not rendered in the performance of a duty,
42 and the second counts of the two indictments are therefore defective in this particular, and judgment on these counts must be arrested. With respect to the first counts of the two indictments the motion is denied for the reasons first stated.

(Endorsed:) Filed Sept. 22nd, 1896. Southard Hoffman, clerk.

43 UNITED STATES OF AMERICA, }
Northern District of California, } ss:

The President of the United States to the marshal of the United States for the northern district of California, Greeting:

Whereas, at the July (1896) term of the district court of the United States of America for the northern district of California, held at the court-room of said court, in the city and county of San Francisco, in said district, to wit, on the 3rd day of September, A. D. 189–, Richard S. Williams was convicted of feloniously, etc., extorting, etc., and taking of one Wong Sam the sum of one hundred dollars under color of his office as Chinese inspector of the Department of the Treasury at the port of San Francisco, State of California, committed on or about the 18th day of September, 1895, at the port and city and county of San Francisco, State of Cala., and within the jurisdiction of said court, contrary to the form of the statutes of the United States in such case made and provided and against the peace and dignity of the said United States;

And whereas, on the 22nd day of September, A. D. 1896, being a day in the said term of said court, said Richard S. Williams was, for said offense of which he stood convicted as aforesaid by the judgment of said court, ordered to pay a fine of $5,000.00 and to be imprisoned at hard labor for the term of three years, to date from September 22nd, 1896, and in default of the payment of said fine to be further imprisoned until the same be paid or until he be otherwise discharged by due process of law; and it was further ordered by the court that said sentence of imprisonment be executed upon the said Richard S. Williams until the other or further order of the court by imprisonment in the State prison of the State of California, at San Quentin, county of Marin, State of California:

Now, this is to command you, the said marshal, to take and keep and safely deliver the said Richard S. Williams into the custody of the keeper or warden or other officer in charge of said State prison forthwith.

And this is to command you, the said keeper and warden and other officers in charge of the said State prison, to receive from the United States marshal of said northern district of California the

said Richard S. Williams, convicted and sentenced as aforesaid, and him, the said Richard S. Williams, keep and imprison at hard labor for the term of three years, to date from Sept. 22nd, 1896, and, in default of the payment of said fine of $5,000.00, further keep and imprison said Richard S. Williams until the said fine be paid or until he be otherwise discharged by due process of law.

Herein fail not.

Witness the Hon. Wm. W. Morrow, judge of the district court of the United States for the northern district of California, and the seal thereof, at San Francisco, in the said district, on the 22nd day of September, A. D. 1896.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of said District Court,
By —— ——, *Deputy Clerk.*

The within warrant of commitment was received by me on the 25th day of September, 1896, and is returned executed this 25th day of September, 1896.

BARRY BALDWIN,
U. S. Marshal,
By T. J. GALLAGHER, *Deputy.*

STATE PRISON, CALIFORNIA.

I hereby certify that Barry Baldwin, U. S. marshal for the northern district of California, has this day delivered to the prison Richard S. Williams, a convict who was sentenced in U. S. district court for the northern district of California on the 22nd day of September, 1896, to be imprisoned in the State prison for the term of six (6) years and to pay a fine of ten thousand dollars, for the crime of feloniously extorting the sum of one hundred and eighty-five dollars under color of his office as Chinese inspector at the port of San Francisco, as appears by the certificate of the clerk of said court, now on file in the office of this prison.

In witness whereof I have hereunto set my hand and affixed the seal of the prison this 25th day of September, A. D. 1896.

2 commitments.

[SEAL.] W. E. HALE, *Warden.*

(Endorsed:) Issued Sept. 22nd, 1896. Filed on return September 25th, 1896. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

44 UNITED STATES OF AMERICA, *Northern District of California,* } ss:

UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } 3267, 3268, Consolidated.

To the Honorable W. W. Morrow, judge of the district court of the United States, northern district of California:

The petition of Richard S. Williams respectfully shows that on the 22nd day of September, 1896, the said district court rendered

its judgment herein against your petitioner, sentencing him to imprisonment in the State prison, at San Quentin, for the period of three years and a fine of five thousand dollars in case No. 3267, and for the period of three years and to the payment of a fine of five thousand dollars in case No. 3268.

That the said United States of America is the complainant herein and the said Richard S. Williams is the defendant.

That the said judgment is final; that your petitioner claims a writ of error herein against said judgment upon the grounds of errors in law committed by the said district court in overruling the defendant's demurrers to the indictments in said consolidated actions; in overruling the defendant's objection to the admission of the affidavit of defendant filed in the superior court in and for the city and county of San Francisco, State of California, in the suit there pending entitled "Isabella M. Williams, plaintiff, *vs.* Richard S. Williams, defendant;" in overruling the defendant's objection to the admission in evidence of the bank book and deposits recited therein standing in the name of defendant in the San Francisco Savings Union; in overruling defendant's objection to the admission in evidence of the bank book and deposits recited therein standing in the name of Isabella M. Williams in the Hibernia Savings and Loan Society; in overruling the objection to the remarks of the prosecuting attorney, Mr. Henley, that "No doubt, every Chinese woman who did not pay Williams was sent back;" in overruling the objection to the admission in evidence of the testimony of Jno. J. Tobin relative to the reputation of defendant in the custom-house; in overruling the objection to the questions put by the prosecution to Ling Yow relative to whether he had been in San Quentin, whether he had been tried in Los Angeles on a criminal charge of perjury, and whether the verdict of the jury in that case was guilty or not guilty. In each instance the court erred in instructing the jury relative to the said bank deposits and the effect of the defendant's failure to explain said deposits and the necessity of his explaining the whole thereof. The court also erred in rendering judgment and sentence on the verdict and indictments herein in case No. 3267. The court also erred in rendering judgment and sentence on the verdict and indictment herein in case No. 3268. The court erred in its judgment and sentence herein; that the evidence is insufficient to justify the verdict in case No. 3267. The court erred in making an order consolidating the indictments in said cases 3267 and 3268. The defendant was not convicted herein by due process of law. All of which errors appear affirmatively from the record and proceedings herein, to
46 which reference is hereby made; that said errors are to the great damage of your petitioner, and he therefore prays that he be allowed a writ of error herein and such other process as will enable him to obtain a review of the case and a correction of said errors by the Supreme Court of the United States; and your petitioner will ever pray, etc.

GEORGE D. COLLINS,
Counsel for Petitioner.

Upon the foregoing petition it appears that the writ of error prayed for of right ought to issue. It is therefore ordered that said writ of error be, and the same hereby is, allowed, and the petitioner is ordered to furnish upon said writ a bond for costs and damages in the penal sum of five hundred dollars.

WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

Dated September 23rd, 1896, at San Francisco, in the State of California.

(Endorsed:) Filed Sept. 23rd, 1896. Southard Hoffman, clerk.

47 *Assignment of Errors.*

RICHARD S. WILLIAMS, Plaintiff,
vs.
UNITED STATES OF AMERICA, Defendant. } Case No. 3267. In Error.

Of October term, in the year of our Lord one thousand eight hundred and ninety-five.

Afterwards, to wit, on the 23rd day of September, 1896, in this same term, before the justices of the Supreme Court of the United States of America, at the Capitol, in the city of Washington, comes the said Richard S. Williams, by Mr. George D. Collins, his counsel, and says that in the record and proceedings in the consolidated actions of The United States *vs.* Richard S. Williams, Nos. 3267 and 3268, in the district court of the United States, northern district of California, there is manifest error in this, to wit, that the said district court erred in overruling the demurrers to the indictment in said consolidated actions; that there is error also in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the admission in evidence of the following affidavit, viz:

In the Superior Court of the City and County of San Francisco, State of California.

ISABELLA M. WILLIAMS, Plaintiff,
vs.
RICHARD S. WILLIAMS, Defendant.

48 STATE OF CALIFORNIA,
City and County of San Francisco, } *ss:*

Richard S. Williams, being first duly sworn, deposes and says:
I have read the affidavit of plaintiff in reply, on her motion for alimony, &c., and in reply thereto I desire to say: It is untrue that prior to the time I entered the employment of the United States Government I was without means and had had no money for quite

a time before, or that I had to borrow money to pay for my living expenses. On the contrary, when I entered the employment of the United States Government, on or about the 28th day of September, 1893, I was worth more money then than I am at the present time, being worth about $5,000.00, and since then having inherited some property; that the $3,000.00 referred to in said affidavit was not acquired by me during the time that I was in the employment of the United States Government, as set forth in said affidavit, but is a portion of the $5,000 heretofore referred to.

The statement in said affidavit that I have in my possession or had in my possession in addition to the said sum of $3,000 aforesaid the sum of $5,000 instead of $4,000 is false and untrue; that to my knowledge plaintiff was not in the habit of carrying said sum of $5,000 in the bosom of her dress. On the contrary, there was on deposit in the Hibernia Savings and Loan Society in her name, belonging to me, the sum of about $4,000, which was a part of the $5,000 possessed by me at the time I entered the employment of the United States Government. The $3,000 in bank referred to is a portion of said sum so deposited in the name of plaintiff in the Hibernia Savings and Loan Society.

In answer to the statement contained on page 2 of said affidavit, to the effect that plaintiff paid for the piano therein re-
49 ferred to, and the bill therefor was made out in her name, I simply desire to annex the bill for said piano to this affidavit, showing the bill to be made out in the name of R. S. Williams.

The property at Nos. 420 and 422 Scott street, mentioned on page 2 of said affidavit, was acquired by my stepfather, Henry Monsferran, now deceased. He was a foreigner, unaccustomed to speaking the English language, and the details of the purchase were made by me, but the money that paid for said property was solely and exclusively the money of the said Henry Monferran. The deed to the property was taken in his name.

It is untrue that at the time plaintiff left our residence, on the 29th day of April, 1896, she left said sum of $5,000 in greenbacks. On the contrary, as above stated, there was no such sum, and the money referred to by her as having been drawn from the Hibernia Savings and Loan Society is $3,000, so deposited in the savings bank.

It is untrue, as stated in said affidavit, that I avoided the service of the summons and complaint in this action, or that by reason thereof plaintiff incurred an expenditure of $11.25.

RICHARD S. WILLIAMS.

Subscribed and sworn to before me this 1st day of June, A. D. 1896.

[SEAL.] LEE D. CRAIG,
Notary Public in and for the City and County of San Francisco, State of California.

Kohler & Chase, dealers in pianos and organs, musical instruments, &c., &c.

SAN FRANCISCO, *Jan.* 23, 1896.

50 Sold to R. S. Williams, 422 Scott St.

98,973, 1 Fischer, stool, and cover $410 00

Paid.

KOHLER & CHASE.

Jan. 23, 1896.

Endorsed: Filed June 1st, 1896. C. F. Curry, clerk, by Geo. W. Lee, deputy clerk.

That there is error, also, in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the admission in evidence of a certain bank book of deposit in the San Francisco Savings Union, a banking corporation of the State of California, which book of deposit is in the name of plaintiff in error and shows the following deposits of money by him in said bank and on the dates herein mentioned, to wit:

October 29, 1895, $350; November 18, 1895, $400; December 17, 1895, $550, making a total of $1,300.

That there is also error in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the admission in evidence of a certain book of deposit in the Hibernia Savings and Loan Society, a banking corporation of the State of California, which book of deposit is in the name of Isabella M. Williams and shows the following deposits made by her in said Hibernia bank and on the dates herein mentioned, to wit, September 10, 1895, $300; September 24, 1895, $150; October 8, 1895, $800; October 23, 1895, $500; November 12, 1895, $700; December 2, 1895, $1,000, making a total of $3,450; that there is also error in this, to wit, that the said district court erred in over-

51 ruling the objection of plaintiff in error to the remark of the prosecuting attorney, Mr. Henley, in the course of the examination of John H. Wise, a witness for the defense, when said prosecuting attorney, in the hearing of the jury, said, in reference to plaintiff in error, "No doubt every Chinese woman who did not pay Williams was sent back," thereby prejudicing the jury against plaintiff in error and preventing him from having a fair trial; that there is also error in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the admission in evidence of the testimony of Jno. J. Tobin that he knew the reputation of plaintiff in error for truth, honesty, and integrity in the custom-house, and that such reputation is bad; that there is also error in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the questions put by the prosecution to Ling Yow, a witness for the defense, which questions were as to whether said Ling Yow had ever been in San Quentin, whether he had been tried in Los Angeles on a criminal

charge of perjury, and whether the verdict of the jury in the case was guilty or not guilty; that there is also error in this, to wit, that the said district court erred in instructing the jury as follows, viz:

"There has been some testimony introduced in support of the "allegations of these indictments respecting the pecuniary condi- "tion of the defendant, and also testimony as to the extent of his "compensation by the Government for services. This evidence was "admitted in compliance with a well-known rule which established
"the relevance of evidence of this character where the charge
52 "is such as that alleged in these indictments.

"If the salary of the defendant during the time alleged in "the indictments and before then was four or five dollars per day, "and if the testimony shows to your satisfaction that he has de- "posited in bank or there was deposited to his credit in bank in "the neighborhood of $4,750 from September 10th to December 17th, "1895, alleged in the indictments, then such testimony may be con- "sidered by you with a view of ascertaining how or by what means "the defendant obtained that amount of money at a time when his "compensation by the Government, as is claimed by the prosecu- "tion, was not to exceed about $150.00 per month.

"Where did he get such large sums of money? From what "source other than the source named in the indictments did he ac- "quire this money? Has he furnished evidence explaining to "your satisfaction the possession of these sums of money?

"These are all questions which you will consider, and if any ex- "planation made by the defendant as to how he came by this money "seems incredible, irrational, and unsatisfactory you are at liberty "to reject it and to act upon the other testimony in the case. If, "after doing all this, you feel to a moral certainty and beyond a "reasonable doubt that he took the money, as alleged in the indict- "ments, then your verdict should be guilty.

"In reference to the testimony which has been introduced in the "case showing the pecuniary condition of the defendant, that if tes- "timony explaining how, when, and by what means the defendant "acquired possession of the sums of money shown to have been de- "posited in the San Francisco Savings Union and Hibernia bank "could have been offered by the defendant and he failed to produce
"such testimony, then such failure may very properly be
53 "taken into consideration by the jury in determining the
"defendant's guilt or innocence.

"Where probable proof is brought of a state of facts tending to "criminate the accused, the absence of evidence tending to a con- "trary conclusion may be considered, although this attitude of the "case alone would not be entitled to much weight, because the "burden of proof lies on the prosecution to make out the whole "case by sufficient evidence; but when proof of inculpating cir- "cumstances had been produced tending to support the charge, and "it is apparent that the accused is so situated that he could offer "evidence of all the facts and circumstances as they existed, and to "show, if such was the truth, that the suspicious circumstances can

"be accounted for consistently with his innocence, and he fails to "offer such proof, the natural conclusion is that the *the* proof, if "produced, instead of rebutting, would tend to sustain the charges. "Therefore, if in this case the defendant could have produced testi- "mony explaining his several deposits in the San Francisco Sav- "ings Union and the Hibernia bank during the months of Septem- "ber, October, November, and December, 1895, and has failed to "produce such testimony, then you are at liberty to infer that any "explanation in his power to make would have been, if made, ad- "verse and prejudicial to the defense.

"The law has been stated by the circuit court of appeals for the "eighth circuit very recently in the case of Gulf, C. & S. Co. Rail- "way *vs.* Ellis, in the 4th United States circuit court of appeals. "Judge Caldwell, speaking for the circuit court of appeals, "said:

54 "'Now, it is a well-settled rule of evidence that when the "circumstances in proof tend to fix a liability on a party "who has it in his power to offer evidence of all the facts as they "existed and rebut the inferences which the circumstances in proof "tend to establish, and he fails to offer such proof, the natural con- "clusion is that the proof, if produced, instead of rebutting, would "support the inferences against him, and the jury is justified in "acting upon that conclusion. "It is certainly a maxim," said "Lord Mansfield, "that all evidence is to be weighed according to "the proof, which it was in the power of one side to have produced "and in the power of the other side to have contradicted."

"'Blatch *v.* Archer, Cowp., 63, 65.

"'It is said by Mr. Starkie, in his work on Evidence, vol. 1, p. 54:

"'The conduct of the party in omitting to produce that evidence "in elucidation of the subject-matter in dispute which is within his "power and which rests peculiarly within his own knowledge fre- "quently affords occasion for presumption against him, since it "raises strong suspicion that such evidence, if advanced, would "operate to prejudice.'

"'The same rule is applicable even in criminal cases. Com. *vs.* "Webster, 5 Cush., 295, 316; People *vs.* McWhorter, 4 Barb., 438.'

"Respecting the contents of the affidavit made by the defendant "and sworn to before Lee D. Craig, a notary public in this city and "county, which has been read in evidence, I instruct you that the "prosecution is not bound by all the statements in said affidavit. "It is the duty of the jury to ascertain from said affidavit and "from the other testimony in the case what portion or por-

55 "tions of the same are true. The jury is then at liberty to "believe one part of it and to disbelieve the other part.

"Such affidavit was introduced upon the theory that it consti- "tuted an admission on the part of the defendant as to his owner- "ship of certain funds referred to therein. The defense then "insisted, as they had a right to, that the entire affidavit should be "read. The whole of it is now before you, and it is for you to de- "termine, from all the circumstances of this case, the situation of

"the defendant and all of the evidence that has been introduced "as to what portion of said affidavit, if any, is true. You are at "liberty to believe or reject such portions of it as you think may "be worthy of belief or disbelief.

"In this respect I call your attention to the deposits as they were "made. The first deposit in the San Francisco Savings Union was "made on October 29, 1895, amounting to $350. On November 18, "1895, there was a deposit of $400, and on December 17, 1895, there "was a deposit of $550, making a total of $1,300.

"Then there was a deposit made with the Hibernia Savings & "Loan Society on September 10, 1895, $300; on September 24th, "$150; October 8th, $800; October 23rd, $500; November 12th, "$700; December 2d, $1,000, making a total of $3,450, and adding "the amount deposited in the San Francisco Savings Union of "$1,300, it makes a total in three months and seventeen days of "$4,750.

"Those deposits were made, as you will observe, at different times. "In September he appears to have deposited the sum of $450. In "October he deposited $1,650. In November he deposited $1,100,
"and in December, up to the 17th, he deposited $1,550, making
56 "a total, as I said, of $4,750; nine deposits in three months
"and seventeen days. Does the defendant's affidavit satis-"factorily explain or account for the receipt of these sums of "money?"

That there is also error in this, to wit, that the said district court erred in rendering judgment and sentence on the verdict and indictment in case No. 3267, being the case where it is charged that plaintiff in error unlawfully took and received from one Wong Sam the sum of one hundred dollars; that there is also error in this, to wit, that the said district court erred in rendering judgment and sentence on the verdict and indictment herein in case No. 3268; that there is also error in this, to wit, that the said district court erred in its judgment and sentence herein; that the evidence is insufficient to justify the verdict in said action No. 3267; that said court erred in consolidating the indictments in said cases 3267 and 3268; that there is also error in this, to wit, that plaintiff in error was not convicted by due process of law.

Whereas by the law of the land the said judgment ought to have been given for said Richard S. Williams, plaintiff in error, and against The United States, defendant in error; and the said plaintiff in error, the said Richard S. Williams, prays the judgment be reversed, annulled, and altogether held for nothing, and that he be restored to all things which he hath lost by occasion of the said judgment.

GEORGE D. COLLINS,
Attorney for Plaintiff in Error.

(Endorsed:) Filed September 23d, 1896. Southard Hoffman, clerk.

57 *Bond on Writ of Error.*

Know all men by these presents that we, Richard S. Williams, as principal, and Maria Monferran, of the city and county of San Francisco, State of California, and T. C. Medovich, of the same place, as sureties, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23d day of September, 1896.

Whereas lately, at a session of the district court of the United States in and for the northern district of California, in a criminal action pending in said court and entitled "United States *vs.* Richard S. Williams," a final judgment was rendered against the said Richard S. Williams, and the said Richard S. Williams having obtained a writ of error and lodged a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid action, and a citation directed to the said United States, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at the Capitol, in the city of Washington, on the 23d day of November, 1896:

Now, the condition of the above obligation is such that if the said Richard S. Williams shall prosecute said writ of error to effect and answer all costs and damages if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

58 In witness whereof we have hereunto set our hands and seals this 23d day of September, 1896.

RICHARD S. WILLIAMS. [SEAL.]
MARIA MANFERRAN. [SEAL.]
T. C. MEDOVICH. [SEAL.]

Signed, sealed, and delivered in the presence of—

GEORGE D. COLLINS.

Approved by—

WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

(Endorsed:) Filed September 23d, 1896. Southard Hoffman, clerk.

59 In the District Court of the United States in and for the Northern District of California.

UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } Nos. 3267, 3268, Consolidated.

Bill of Exceptions.

Be it remembered that the above-entitled action came regularly on for trial before the said court and a jury regularly empanelled to try the same. The United States district attorney and Barclay Henley represented the prosecution and Messrs. Lyman Mowry and T. C. Coogan represented the defendant; whereupon the respective parties introduced evidence, oral and documentary, and after argument of counsel the court delivered its charge to the jury, and the said action was thereupon submitted to the jury, and after deliberating the jury returned a verdict against said defendant, finding him guilty as charged in the indictments herein; that to said verdict the defendant then and there duly excepted.

I.

1. That defendant interposed his demurrers to the indictments herein, and after argument thereon the court overruled the said demurrers; to each of which rulings said defendant then and there duly excepted.

II.

That during the trial of said consolidated actions the following objections were made by the defendant and the following
60 exceptions reserved, viz:

1. GEORGE W. LEE was called as a witness for the prosecution, and, being duly sworn, testified: I am a deputy county clerk of the city and county of San Francisco and have with me the affidavit of the defendant, Richard S. Williams, filed in the divorce suit of Isabella M. Williams *vs.* Richard S. Williams, in the superior court in and for the city and county of San Francisco, State of California, being the court where that suit is pending.

The prosecution here offered said affidavit in evidence.

Mr. MOWRY: Objected to as irrelevant, immaterial, and incompetent, and as bringing into this case a collateral issue.

The COURT: I overrule the objection.

Mr. MOWRY: We will take an exception.

Mr. HENLEY: It is only a paragraph that I want. That paragraph is as follows. (Here counsel read that portion of said affidavit included in brackets herein.)

Mr. COOGAN: If it is read at all, the jury is entitled to all of it.

The COURT: Read it all.

The said affidavit was then read in evidence herein by the prosecution and is as follows, viz:

In the Superior Court of the City and County of San Francisco, State of California.

ISABELLA M. WILLIAMS, Plaintiff,
vs.
RICHARD S. WILLIAMS, Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco, } *ss:*

61 Richard S. Williams, being first duly sworn, deposes and says:

I have read the affidavit of plaintiff in reply on her motion for alimony, &c., and in reply thereto I desire to say it is untrue that prior to the time I entered the employment of the United States Government I was without means and had had no money for quite a time before, or that I had to borrow money to pay my living expenses. On the contrary, when I entered the employment of the United States Government, on or about the 28th day of September, 1893, I was worth more money then than I am at the present time, being worth about $5,000.00, and since then having inherited some property; that the $3,000.00 referred to in said affidavit was not acquired by me during the time I was in the employment of the United States Government, as set forth in said affidavit, but is a portion of the $5,000.00 heretofore referred to.

The statement in said affidavit that I have in my possession or had in my possession, in addition to the said sum of $3,000.00 aforesaid, the sum of $5,000.00 instead of $4,000.00 is false and untrue; that, to my knowledge, plaintiff was not in the habit of carrying said sum of $5,000.00 in the bosom of her dress. (On the contrary, there was on deposit in the Hibernia Savings and Loan Society in her name, belonging to me, the sum of about $4,000, which was a part of the $5,000.00 possessed by me at the time I entered the employment of the United States Government. The $3,000.00 in bank referred to is a portion of said sum so deposited in the name of plaintiff in the Hibernia Savings and Loan Society.)

62 In answer to the statement contained on page 2 of said affidavit, to the effect that plaintiff paid for the piano therein referred — and the bill therefor was made out in her name, I simply desire to annex the bill for said piano to this affidavit, showing the bill to be made out in the name of R. S. Williams.

The property at Nos. 420 and 422 Scott street, mentioned on page 2 of said affidavit, was acquired by my stepfather, Henry Monsferran, now deceased. He was a foreigner, unaccustomed to speaking the English language, and the details of the purchase were made by me, but the money that paid for said property was solely and exclusively the money of the said Henry Monsferran. The deed to the property was taken in his name.

It is untrue that at the time plaintiff left our residence on the 29th day of April, 1896, she left said sum of $5,000.00 in greenbacks. On the contrary, as above stated, there was no such sum, and the money referred to by her as having been drawn from the Hibernia Savings and Loan Society is $3,000.00, so deposited in the savings bank.

It is untrue, as stated in said affidavit, that I avoided the service of the summons and complaint in this action, or that by reason thereof plaintiff incurred an expenditure of $11.25.

RICHARD S. WILLIAMS.

Subscribed and sworn to before me this 1st day of June, A. D. 1896.

[NOTARIAL SEAL.] LEE D. CRAIG,
Notary Public in and for the City and County of San Francisco, State of California.

Kohler & Chase, dealers in pianos and organs, musical instruments, &c., &c.

SAN FRANCISCO, *Jan.* 23*d*, 1896.

63 Sold to R. S. Williams, 422 Scott St.

98,973, 1 Fisher, stool, and cover $410 00

Paid.

KOHLER & CHASE.

Jan. 23d, 1896.

Said affidavit is endorsed: Filed June 1st, 1896. C. F. Curry, clerk, by Geo. W. Lee, deputy clerk.

It is hereby certified that, independently of said affidavit, there is no evidence before the court relative to the matters therein referred to except the bank books next hereinafter mentioned.

2. The prosecution offered in evidence the book of deposit of moneys in the San Francisco Savings Union, a banking corporation of the State of California, which book and deposits are in the name of Richard S. Williams, the defendant, and also offered in evidence the book of deposit of moneys in the Hibernia Savings and Loan Society, a banking corporation of the State of California, which latter book and deposits are in the name of Isabella M. Williams. The deposits in the San Francisco Savings Union, as evidenced by said first-mentioned book, are as follows: October 29, 1893, $350; November 18, 1895, $400; December 17, 1895, $550, making a total of $1,300. The deposits in the Hibernia Savings and Loan Society, as evidenced by said bank book in the name of Isabella M. Williams, are as follows: September 10, 1895, $300; September 24, 1895, $150; October 8, 1895, $800; October 23, 1895, $700;
64 December 2, 1895, $1,000, making a total of $3,450.

That the defendant thereupon objected to the admission in evidence of the said bank book and deposits therein recited in the

said San Francisco Savings Union, upon the ground that the same are irrelevant and immaterial. The court overruled said objection; to which ruling defendant then and there duly excepted.

That defendant objected to the admission in evidence of said bank book of Isabella M. Williams and of the deposits therein recited, upon the ground that the same are irrelevant and immaterial; that the court overruled said objection; to which ruling defendant then and there duly excepted; that said items of said books and said deposits evidenced thereby were then by the prosecution read in evidence herein. It is hereby certified that said bank books and affidavit are the only evidence before the court relative to said deposits, and that there is no evidence before the court indicating the existence of any privity or relation between said defendant and said Isabella M. Williams at the time said deposits were made by her or at any other time except as indicated in said affidavit.

3. JOHN H. WISE was called herein as a witness for the defense, and, being duly sworn, testified that he is the collector of customs for the port of San Francisco. The witness also testified to certain other facts. The question was then asked him, "On your return from Washington, to whom was assigned the investigation of female cases?"

The COURT: What is the purpose of this testimony?

Mr. MOWRY: It has been sworn to by Mr. Tobin that Mr. Williams asked for certain cases to be assigned to him and show
65 the *the* result. We propose to show by Mr. Wise that on his return from Washington — assigned to Williams the investigation of Chinese female cases, and while Mr. Williams was acting in that behalf there were more females sent back to China than ever were sent back before or after.

Mr. HENLEY: We object to that as being irrelevant. No doubt, every Chinese woman who did not pay Williams was sent back.

Mr. MOWRY: We object to Mr. Henley making any such statement as that before the jury.

The COURT: Objection overruled.

Mr. MOWRY: We will take an exception.

4. Mr. J. TOBIN was sworn as a witness on behalf of the prosecution and testified: I am a deputy collector of customs. I know the defendant's reputation for truth, honesty, and integrity in the customs-house.

J. J. TOBIN recalled.

Mr. SCHLESINGER:

Q. You have stated your official position?

A. Yes, sir.

Q. How long have you been a resident of this State?

A. Twenty-five years.

Q. Do you know what the general reputation of Mr. Williams was in this community prior to the 7th of April, 1896?

A. Yes, sir; in the custom-house and among the officials.
Q. Is it good or bad?

Mr. MOWRY: That is not general reputation.
The COURT: The question is the general reputation of the defendant in the community where he lives.

66 Mr. COOGAN: Not among a particular class of people.
Mr. SCHLESINGER: What people generally say about him.
The COURT: Those who know him.

A. His general reputation is bad—that is, in that way.

Mr. COOGAN: I move to strike that out.

The COURT: The question is for you to say whether you know his general reputation.
A. Not outside of the custom-house.

Mr. COOGAN: I move to strike out the answer of the Colonel in which he states the reputation of the defendant, on the ground that the proper foundation has not been laid.
The COURT: The motion is denied.
Mr. COOGAN: We will take an exception.

Mr. HENLEY: What is his reputation?

Mr. COOGAN: We object upon the ground that it is irrelevant and the proper foundation has not been laid.
The COURT: I will overrule the objection.
Mr. COOGAN: We take an exception.

The witness then testified that the defendant's reputation in the custom-house is bad.

5. LING YOW was called as a witness for the defendant, and, being duly sworn, testified to certain material facts in favor of the defense. The following questions were then put to him by the prosecution, viz:

Mr. HENLEY: Do you know a place called San Quentin, in this State?
A. Yes, sir.
Q. Were you ever there?

67 Mr. MOWRY: We object to that question on the ground that that is not a proper question to put to this witness or any other witness. The rule is you must ask the witness, "Were you ever convicted of a felony?"
Mr. HENLEY: I think it is a proper question.
The COURT: I think it is not a proper question unless it may be that that is the only way you can get the answer.
Mr. HENLEY: That is the point.
The COURT: Try it the other way.

Mr. HENLEY: On June 15th, 1892, were you not convicted of perjury in the superior court of Los Angeles county and sentenced to San Quentin?

The COURT: Answer that question.

A. No, sir.

Mr. HENLEY:

Q. Did you ever live in Los Angeles?
A. Yes, sir.
Q. Were you ever tried for any public offense, the commission of a crime there?
A. Yes, sir.
Q. Were you convicted?
A. No, sir; I was not convicted.
Q. Were you acquit-ed?
A. There was a new trial asked for and I was not tried.
Q. Do you say you never were convicted of perjury in any court in this State?

Mr. COOGAN: I object to the question as irrelevant, incompetent, and immaterial, the proper foundation not being laid, and it is not the best evidence.
The COURT: Objection overruled.
Mr. COOGAN: We take an exception.

68 A. No, sir.
Q. What was the verdict of the jury—guilty or not guilty?

Mr. COOGAN: That is a matter of record. We object to the question upon the same ground and call your honor's attention to the fact that there is better evidence.

A. The jury found me guilty and I got a new trial, but I was not tried.
Q. Were you tried the second time?
A. I was not tried the second time.
Q. What crime were you charged with in that indictment at the time you were tried?

(Same objection, ruling, and exception.)

A. They said I told an untruth.
Q. What was the verdict of the jury—guilty or not guilty?

Mr. COOGAN: We object upon the ground that the record is the best evidence.
The COURT: Objection overruled.
Mr. COOGAN: We take an exception.

The witness then answered that the verdict of the jury was "guilty," and that the court subsequently granted him a new trial and he was discharged from custody.

III.

In the case of indictment No. 3267, wherein it is charged that the sum of one hundred dollars was taken from Wong Sam, the defendant maintains that the evidence is that the money was taken from Chin Deock and not from Wong Sam. The testimony is as follows:

WONG SAM, being duly sworn as a witness on behalf of the prosecution, testified: I know a Chinaman named Wong Lin
69 Toy. I think he came to San Francisco on the steamer "Coptic" some time in August, 1895. I had something to do with his landing. His brother, Chin Deock, brought me notice. Four or five days before the arrival of the steamer I talked to Williams, the defendant. I told him, When would this Chinaman, Wong Lin Toy, be landed? He said, "It will be very hard to land him now, because the collector was suspicious of all native-born Chinamen." I told him I was ordered by his brother to engage an attorney to take care of the case. He said, "There is no use getting an attorney; he will never be landed if I report bad to the collector; but if you dismiss the attorney and hand the case over to me I will land him much easier, besides save you money in going to the court and expenses and trouble, etc." Then I told him, "How can it be done?" He said, "You have to spend some money." I asked what the expenses would be. He said about $100.00. I told him I would have to see his brother about it. Then I had a talk over with his brother. On the following evening I told Williams if he can land this Wong Lin Toy we will pay him the amount what he requires.

Q. If he would land this Chinaman that you would pay him the amount he demanded?

A. Yes, sir. He asked me did I dismiss the attorney. I said I did. Then about two days later Wong Lin Toy was landed. Then he came over to my room and wanted the $100. I sent for Wong Lin Toy's brother to come to my room when Mr. Williams was there, and I told his brother that this gentleman came up and wanted to get the money for landing his brother. He handed me over that $100.00. I tried to pay $90.00 instead of $100, but
70 he refused to take it. Then I handed $100.00 over to Mr. Williams in the presence of Wong Lin Toy's brother, in my room.

Q. Did you know at this time what Williams' official position was?

A. Yes, sir; he was inspector and interpreter of the custom-house. I have stated all that passed between Williams and myself, except he told me if I had any more cases to let him know first instead of getting a lawyer.

Cross-examination:

On cross-examination the witness testified: The first day of the conversation, when he asked $100.00, I told him I would see his brother, and he said he would call the next evening. Then I gave him a straight answer—that when he was landed the money would be paid. He said, "Even if you get an attorney and I report back to the collector that you cannot land him, and you will have to go to court and spend money and have expenses and trouble. Give the case to me and dismiss the attorney and I will land him for $100." I told him it was a straight case, and I would give an answer

the next day after I would see his brother. Afterwards, at the next conversation, I told him Chin Deock was satisfied to pay him $100.00 if his brother was landed.

Q. In regard to the Wong Lin Toy case, that was all that you said—that his brother was willing to pay him $100.00?

A. If he was landed he could come up to my room and get the money. The next and last conversation about Wong Lin Toy was when he was landed, on the same evening, about September 16, 1895. He then first told me that Wong Lin Toy was landed.

71 I said, "Yes; it is all right now." Then he asked me for the money. Then I opened the door and told an outside boy to go and find Chin Deock. Chin Deock then came.

Q. What was said by you to Williams, or Chin Deock to Williams, or Williams to you, or Williams to Chin Deock, about this case of Wong Lin Toy?

A. When Chin Deock came back I said, "This man has come up for the money for landing your brother. Have you the money prepared?" He said, Yes. I said, "Give it to me." He handed over the money to me and I handed it over to Williams.

Q. Chin Deock handed the money to you and you handed it to Williams?

A. Yes, sir.

Q. How much money?

A. He handed me $100.00. I tried to pay Williams $90.00. He refused to take it and I gave him the full.

Q. You thought you would take $10.00 as a sort of commission for your part of the business?

A. We were talking together. I tried to save all the money I could for that friend's sake. After the money was paid, Williams went away.

CHIN DEOCK was sworn as a witness on behalf of the prosecution and testified: Wong Lin Choy's father sent me a letter to attend to the landing of the former. On receipt of the letter I came here and went to Wong Sam's room and talked with him about the matter. I saw Williams prior to the time of the landing of my brother, Wong Lin Choy, in Wong Sam's room.

Q. Was that before your brother was landed, or after?

72 A. Before he was landed. Williams said, "Don't get an attorney in that case. If you hire an attorney you will go to court, and it will cost considerable money." Then I said, "Then what would you do?" He said, "You give me a hundred dollars; for a hundred dollars I can have him landed." I said, "Well, that is all right; if you have my younger brother landed, won't I pay you a hundred dollars?"

Then the latter end of the month he was landed. It was a few days after this conversation.

Q. Did you pay any money for it?

A. After he was landed I went up to Wong Sam's room at night, about seven o'clock, and met Williams and Wong Sam there. He said, "Your younger brother has been landed and Williams wants

the money." So I said, "Well, I will pay it," and I took the money from my person. I held a hundred dollars, and I said, "I am poor now; ask him is he willing to take $90." He was not willing. As he was not willing, I paid him the full hundred dollars. When I paid the money I put it into Wong Sam's hands, and Wong Sam handed it to him. This occurred in Wong Sam's room. When I went in I sat down on a chair. There were only we three inside. The money was paid in gold.

Cross-examination:

On cross-examination the witness testified: The first time I spoke to Williams was when Wong Lin Choy came here. When I went to Wong Sam's room to pay the money Wong Sam and Williams were there. Wong Sam said, "Your brother has been landed and Williams wants the money." I said then, "If he has been landed, won't I pay the money? I am poor now. Offer him $90
73 and see if he is willing to take it." Williams was not willing to take it, so I paid the amount in full. The money was put in Wong Sam's hands, and he handed it to him. Then he took the money and said, "I have some business," and went away.

Q. What did you put the money in Wong Sam's hands for; why did you not hand it over yourself?

A. Well, Wong Sam told me to.

Q. What did he tell you to do?

A. He said, "Give me the money to give to him."

Q. Why did you not hand the money directly to Williams instead of handing the money directly to Wong Sam and doing it in this roundabout way?

A. I had got Wong Sam to attend to the matter.

Q. It was necessary to use his hand to pass the money from you to Mr. Williams?

A. Yes, sir.

That to the verdict finding defendant guilty on said indictment 3267 defendant at the time of its rendition duly excepted; that to the judgment sentencing him on said verdict just mentioned and on said indictment 3267 defendant at the time of said judgment duly excepted thereto.

IV.

The court instructed the jury as follows in respect to the matters in the following instructions referred to: "There has been some "testimony in support of the allegations of these indictments respect- "ing the pecuniary condition of the defendant, and also testimony "as to the extent of his compensation by the Government for serv- "ices. This evidence was admitted in compliance with a well-
"known rule which establishes the relevance of evidence of
74 "this character where the charge is such as that alleged in
"these indictments.

"If the salary of the defendant, during the time alleged in the "indictments and before then, was four or five dollars per day, and

"if the testimony shows to your satisfaction that he has deposited "in bank or there was deposited to his credit in bank in the neigh- "borhood of $4,750 from September 10th to December 17th, 1895, "alleged in the indictments, then such testimony may be consid- "ered by you with a view of ascertaining how or by what means "the defendant obtained that amount of money at a time when his "compensation by the Government, as is claimed by the prosecu- "tion, was not to exceed about $150.00 per month.

"Where did he get such large sums of money? From what "source other than the source named in the indictments did he "acquire this money? Has he furnished evidence explaining to "your satisfaction the possession of these sums of money?

"These are all questions which you will consider, and if any ex- "planation made by the defendant as to how he came by this money "seems incredible, irrational, and unsatisfactory you are at liberty "to reject it and to act upon the other testimony in the case. If, "after doing all this, you feel to a moral certainty and beyond a "reasonable doubt that he took the money, as alleged in the in- "dictments, then your verdict should be guilty.

"In reference to the testimony which has been introduced in "the case showing the pecuniary condition of the defendant, that "if testimony explaining how, when, and by what means the de- "fendant acquired possession of the sums of money shown to have
"been deposited in the San Francisco Savings Union and
75 "Hibernia bank could have been offered by defendant, and
"he failed to produce such testimony, then such failure may "very properly be taken into consideration by the jury in deter- "mining the defendant's guilt or innocence.

"Where probable proof is brought of a state of facts tending to "criminate the accused, the absence of evidence tending to a con- "trary conclusion may be considered, although this attitude of the "case alone would not be entitled to much weight, because the "burden of proof lies on the prosecution to make out the whole "case by sufficient evidence; but when proof of inculpating circum- "stances had been produced tending to support the charge, and it "is apparent that the accused is so situated that he could offer "evidence of all the facts and circumstances as they existed, and to "show, if such was the truth, that the suspicious circumstances can "be accounted for consistently with his innocence, and he fails to offer "such proof, the natural conclusion is that the proof, if produced, "instead of rebutting, would tend to sustain the charges.

"Therefore, if in this case the defendant could have produced "testimony explaining his several deposits in the San Francisco "Savings Union and the Hibernia bank during the months of "September, October, November, and December, 1895, and has "failed to produce such testimony, then you are at liberty to infer "that any explanation in his power to make would have been, "if made, adverse and prejudicial to the defense.

"The law has been stated by the circuit court of appeals for "the eighth circuit very recently in the case of Gulf, C. & S. "Co. Railway *vs.* Ellis, in the 4th United States circuit court of

"appeals. Judge Caldwell, speaking for the circuit court of
"appeals, said:
76 "'Now, it is a well-settled rule of evidence that when the
"circumstances in proof tend to fix a liability on a party
"who has it in his power to offer evidence of all the facts as they
"existed and rebut the inferences which the circumstances in proof
"tend to establish, and he fails to offer such proof, the natural
"conclusion is that the proof, if produced, instead of rebutting,
"would support the inference against him, and the jury is justified
"in acting upon that conclusion. "It is certainly a maxim," said
"Lord Mansfield, "that all evidence is to be weighed according to
"the proof which it was in the power of one side to have produced
"and in the power of the other side to have contradicted."
"'Blach *v.* Archer, Cowp., 63, 65.

"'It is said by Mr. Starkie in his work on Evidence, vol. 1, p. 54:
"'The conduct of the party in omitting to produce that evidence
"in elucidation of the subject-matter in dispute which is within
"his power and which rests peculiarly within his own knowledge
"frequently affords occasion for presumption against him, since it
"raises strong suspicion that such evidence, if adduced, would
"operate to his prejudice.'
"'The same rule is applicable even in criminal cases. Com. *vs.*
"Webster, 5 Cush., 295, 316; People *vs.* McWhorter, 4 Barb., 438.'
"Respecting the contents of the affidavit made by the defendant
"and sworn to before Lee D. Craig, a notary public in this city and
"county, which has been read in evidence, I instruct you that the
"prosecution is not bound by all the statements in said affidavit.
"It is the duty of the jury to ascertain from said affidavit
77 "and from the other testimony in the case what portion or
"portions of the same are true. The jury is then at liberty
"to believe one part of it and to disbelieve the other part.
"Such affidavit was introduced upon the theory that it consti-
"tuted an admission on the part of the defendant as to his owner-
"ship of certain funds referred to therein. The defense then in-
"sisted, as they had a right to, that the entire affidavit should be
"read. The whole of it is now before you, and it is for you to de-
"termine, from all of the circumstances of this case, the situation of
"the defendant, and all of the evidence that has been introduced,
"as to what portion of said affidavit, if any, is true. You are at
"liberty to believe or reject such portions of it as you think may be
"worthy of belief or disbelief.
"In this respect I call your attention to the deposits as they were
"made. The first deposit in the San Francisco Savings Union was
"made on October 29, 1895, amounting to $350. On November 18,
"1895, there was a deposit of $400, and on December 17, 1895, there
"was a deposit of $550, making a total of $1,300.
"Then there was a deposit made with the Hibernia Savings &
"Loan Society on September 10, 1895, $300; on September 24th,
"$150; October 8th, $800; October 23d, $500; November 12th,
"$700; December 2d, $1,000, making a total of $3,450, and adding

"the amount deposited in the San Francisco Savings Union of "$1,300, it makes a total in three months and seventeen days of "$4,750.

"These deposits were made, as you will observe, at different times. "In September he appears to have deposited the sum of $450; in "October he deposited $1,650; in November he deposited $1,100, "and in December, up to the 17th, he deposited $1,550, making a
"total, as I said, of $4,750; nine deposits in three months and
78 "seventeen days. Does the defendant's affidavit satisfac-
"torily explain or account for the receipt of these sums of "money?"

That to each of the foregoing instructions the defendant then and there specifically and specially duly excepted at the time they were given and before the jury retired, and said exceptions and all the other exceptions in this bill mentioned were by the court noted at the time each exception was taken; that in relation to each of said instructions it is certified that there is no evidence that said moneys on deposit as aforesaid in the San Francisco Savings Union and the Hibernia Savings and Loan Society, or any part of said moneys, were the fruit of crime, or that any portion thereof embraced the sum of $185, the money charged in the indictments herein to have been unlawfully taken by defendant, except as shown by the affidavit hereinbefore set forth and the dates of said deposits, and to the extent that it is permissible to infer the fact as is indicated in the foregoing instructions, the defendant having failed to explain the said deposits.

V.

That the court consolidated said indictments in cases 3267 and 3268, and to the order consolidating the same defendant then and there duly excepted.

VI.

That after said verdict defendant was called before said court for sentence, and the district attorney moved the court that sentence be imposed; whereupon, in answer to said motion, the defendant, by his counsel, Mr. George D. Collins, moved said court for a new
trial on each of said indictments 3267 and 3268, and also
79 moved said court in arrest of judgment on the second counts
in said indictments; that thereupon said motions were argued and taken under advisement by the court; that thereafter the court denied said motions for a new trial and granted said motions in arrest of judgment, and to said rulings denying said motions for a new trial the defendant then and there duly excepted.

VII.

That thereupon the court rendered its judgment, sentencing the defendant upon said verdict to three years' imprisonment in the State prison, at San Quentin, and a fine of $5,000.00 in case No. 3267,

and to three years' imprisonment in the State prison, in San Quentin, and a fine of $5,000.00 in case No. 3268.

That to said sentence and judgment in each of said cases the defendant then and there duly excepted.

Assignment of Errors.

I.

The court erred in overruling the said demurrers.

II.

The court erred in overruling the defendant's objection to the admission in evidence of the affidavit of defendant filed in the superior court in and for the city and county of San Francisco, in the suit of Isabella M. Williams, plaintiff, *vs.* Richard S. Williams, defendant, and filed therein on the 1st day of June, 1896.

III.

The court erred in overruling the defendant's objection to the admission in evidence of the bank book and deposits recited therein standing in the name of defendant in the said San Francisco Savings Union.

80

IV.

The court erred in overruling the defendant's objection to the admission in evidence of the bank book and deposits recited therein standing in the name of Isabella M. Williams in the said Hibernia Savings and Loan Society.

V.

The court erred in overruling the objection to the remark of the prosecuting attorney, Mr. Henley, that "No doubt, every Chinese woman who did not pay Williams was sent back."

VI.

The court erred in overruling the objection to the admission of the testimony of Jno. J. Tobin relative to the reputation of the defendant in the custom-house.

VII.

The court erred in overruling the objections to the questions put by the prosecution to Ling Yow relative to whether he had been in San Quentin; whether he had been tried in Los Angeles on a criminal charge of perjury, and whether the verdict of the jury in that case was guilty or not guilty.

VIII.

The court erred in each instance in giving to the jury the several instructions hereinabove set forth.

IX.

The court erred in rendering judgment and sentence on the verdict and indictment in case No. 3267.

X.

The court erred in rendering judgment and sentence on the verdict and indictment in case No. 3268.

81 XI.

The court erred in its judgment and sentence herein.

XII.

The court erred in its judgment sentencing the defendant to imprisonment in the State prison, at San Quentin, for three years and a fine of $5,000 in case 3267, and also in a similar sentence in case No. 3268.

XIV.

The defendant was not convicted by due process of law.

XV.

The court erred in making an order consolidating the indictments in said cases 3267 and 3268.

Certificate.

The defendant herein praying that the foregoing bill of exceptions be authenticated and the exceptions therein stated be made matter of record:

Now, therefore, it is hereby certified that the said bill of exceptions is correct; that the same contains all the evidence necessary to explain the exceptions, and said bill is hereby allowed and its accuracy is hereby attested this 22d day of September, 1896.

WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

Ordered that the foregoing bill of exceptions be filed *nunc pro tunc* as of September 22d, 1896.

WM. W. MORROW,
District Judge.

O K.
BARCLAY HENLEY.

(Endorsed:) Filed Oct. 13th, 1896, *nunc pro tunc* as of Sept. 22d, 1896. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

82 UNITED STATES OF AMERICA, *ss:*

The within petition having been fully considered and the record upon said writ of error furnishing sufficient cause, it is ordered that a supersedeas upon the judgments in said petition mentioned be, and the same hereby is, granted; and it is further ordered that, pending the determination of the writs of error issued upon said judgments, the within-named Richard S. Williams be, and he is hereby, admitted to bail in the sum of three thousand dollars upon each of said judgments, the sureties to justify before the clerk of the district court of the United States, northern district of California; and upon furnishing said bail it is ordered that the said Richard S. Williams be released and discharged from imprisonment.

Done at the city of Washington, in the District of Columbia, this 3d day of October, 1896.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

(Endorsed:) Filed Oct. 13th, 1896. Southard Hoffman, clerk.

83 UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

Be it remembered that on this 9th day of October, 1896, before the undersigned, clerk of the district court of the United States for the northern district of California, personally appeared Richard S. Williams, as principal, and John T. Davis and Phillippe Reichart, as sureties, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of three thousand dollars ($3,000), separately to be levies and made out of their respective goods and chattels and lands and tenements, to the use of the United States.

The conditions of the above recognizance is such that whereas an indictment was found by the grand jury of the United States for the northern district of California and filed on the 7th day of April, A. D. 1896, in the district court of the United States for the northern district of California, charging the said Richard S. Williams with feloniously, etc., extorting, etc., and taking of one Wong Sam the sum of one hundred dollars under color of his office as Chinese inspector of the Department of the Treasury at the port of San Francisco, State of California, in violation of the provisions of section 3169 of the Revised Statutes of the United States, subdivision- 1 and 2, and section 23, act of February 8, 1875, volume 1, 2nd edition, supplement Revised Statutes of the United States; and whereas the said Richard S. Williams was thereafter brought to trial on said indictment before a jury and said United States district court, was found guilty and sentenced to pay a fine of five thousand dollars, and to be imprisoned

84 in the State prison of the State of California, at San Quentin, for the space and period of three years; and whereas said Williams is now serving out said sentence; and whereas after said conviction said Williams sued out in the Supreme Court

of the United States a writ of error to said district court; whereas by an order made and entered in said Supreme Court by the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, on the 3rd day of October, 1896, the said Richard S. Williams has been admitted to bail, pending the said determination in said Supreme Court of said writ of error, in the sum of three thousand dollars, the sureties to justify before the said clerk of said district court:

Now, therefore, if the said Richard S. Williams shall personally appear and render himself in judgment, on the final determination in said Supreme Court of the United States of said writ of error, at and before the said district court of the United States aforesaid or whenever or wherever he may be required to answer said judgment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises and not depart the said district and said court without leave first obtained, and, if said writ of error shall be dismissed, shall appear and render himself in execution of the judgment herein, then this recognizance shall be void; otherwise to remain in full effect and virtue.

RICHARD S. WILLIAMS. [SEAL.]
J. T. DAVIS. [SEAL.]
PHILIPPE REICHART. [SEAL.]

Taken and acknowledged before me this 9th day of October, A. D. 1896.

[SEAL.] SOUTHARD HOFFMAN,
Clerk U. S. District Court, Northern District of California.

85 UNITED STATES OF AMERICA, }
Northern District of California, } ss:

John T. Davis and Phillippe Reichart, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of three thousand dollars exclusive of property exempt from execution and over and above all debts and liabilities.

J. T. DAVIS.
PHILIPPE REICHART.

Subscribed and sworn to before me this 9th day of October, A. D. 1896.

[SEAL.] SOUTHARD HOFFMAN,
Clerk U. S. District Court, Northern District of California.

(Endorsed:) Filed October 9th, 1896. Southard Hoffman, clerk.

86 UNITED STATES OF AMERICA, }
Northern District of California, } ss:

I, Southard Hoffman, clerk of the district court of the United States for the northern district of California, do hereby certify the

foregoing and hereunto annexed eighty-five pages, numbered from one (1) to eighty-five (85), respectively, are a true copy of the record and of all proceedings in the cause mentioned in the annexed writ of error, and that the same constitute the return to said writ.

Seal of the U. S. District Court, Northern Dist. of California.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, in said district, this 21st day of October, 1896.

SOUTHARD HOFFMAN, *Clerk*,
By J. S. MANLEY, *Deputy Clerk*.

Endorsed on cover: Case No. 16,440. N. California D. C. U. S. Term No., 661. Richard S. Williams, plaintiff in error, *vs.* The United States. Filed November 28th, 1896.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 692. 267.

RICHARD S. WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED NOVEMBER 28, 1896.

(16,441.)

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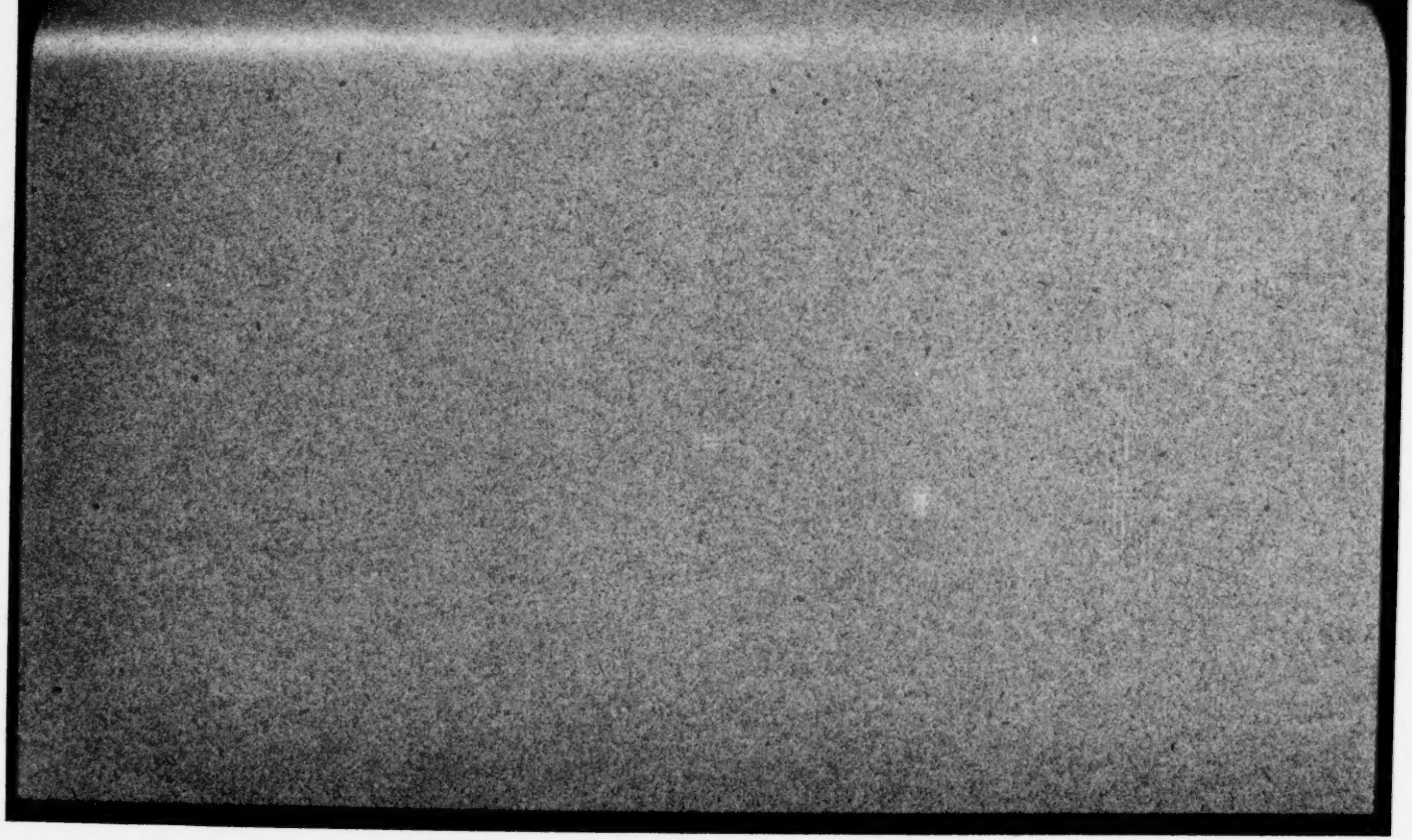

(16,441.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 662.

RICHARD S. WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 19, 1897.

1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States, northern district of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States and Richard S. Williams, manifest errors hath happened, to the great damage of the said Richard S. Williams, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 23rd day of November, 1896, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

2 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 23d day of September, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal of the U. S. District Court, Northern Dist. of California.]

SOUTHARD HOFFMAN,
Clerk of the District Court of the United States,
Northern District of California.

The foregoing writ of error is hereby allowed this 23rd day of September, 1896, at San Francisco, in the State of California.

WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

3 [Endorsed:] No. 3268. U. S. dist. court, northern district of California. The United States *vs.* Richard S. Williams. Writ of error. Filed Sept. 23rd, 1896. Southard Hoffman, clerk, by ——— ———, deputy clerk. The said plaintiff in error also lodged in the clerk's office of said district court, on the said 23rd day of September, 1896, a true copy of said writ of error for the defendant in error. Southard Hoffman, clerk.

4 *(Return to Writ of Error.)*

The answer of the judge of the district court of the United States for the northern district of California.

The record and proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[Seal of the U. S. District Court, Northern Dist. of California.]

SOUTHARD HOFFMAN,
Clerk U. S. District Court, Northern Dist. of California,
By J. S. MANLEY, *Deputy Clerk.*

5 *Citation on Writ of Error.*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the Capitol, in the city of Washington, on the 23d day of November, 1896, pursuant to a writ of error lodged in the clerk's office of the district court of the United States, northern district of California, wherein Richard S. Williams is plaintiff in error and you are defendant in error, to show cause, if any there be, why the final judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. W. W. Morrow, judge of the district court of the United States, northern district of California, this 23d day of September, 1896, at San Francisco, California.

WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

This is to certify that on the 23d day of September, 1896, the foregoing citation was served upon the undersigned by delivery of a true copy thereof to him, and admission of said service is hereby made.

BARCLAY HENLEY,
Special Counsel of the U. S.
HENRY S. FOOTE,
Attorney for the United States.

(Endorsed:) Filed September 23d, 1896. Southard Hoffman, clerk.

6 In the District Court of the United States in and for the Northern District of California.

[On the margin:] Sec. 3169, Rev. Stat., sub. 1 & 2, and sec. 23, act of Feb'y 8, 1875, vol. 1, 2nd ed., Supp. Rev. Stat.

At a stated term of said court, begun and holden at the city and county of San Francisco, within and for the northern district of California, on the first Monday in February, in the year of our Lord one thousand eight hundred and ninety-six—

The grand jurors of the United States of America within and for the district aforesaid on their oath present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the sixth day of November, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the said United States, duly appointed and acting under the authority of the laws of the said United States, and being then and there a person designated as Chinese inspector at said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the said United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, did then and there, as such officer, willfully, knowingly, corruptly, and feloniously, for the sake of gain and contrary to the duty of his said office and by color thereof, ask, demand, receive, extort, and take of one Chan Ying, a Chinese

7 person, a certain sum of money, to wit, the sum of eighty-five dollars, and which said sum of money was not due to him, the said Richard S. Williams, and which the said Richard S. Williams was not then and there or at all, by virtue of his said office or otherwise, entitled to demand, ask, receive, or take of said Chan Ying or any other person—that is to say, that on November the second, in the year of our Lord one thousand eight hundred and ninety-five, there arrived at the port of San Francisco aforesaid from a foreign port or place, to wit, the port of Hong Kong, in the Empire of China, a male person of Chinese descent, to wit, one Chin See Yung, who claimed to the collector of said port that he was entitled to land, be, and remain within the United States on the ground that he was a native born of the said United States; that thereafter such proceedings were had and taken before said collector of customs in accordance with law that the said Chin Shee Hung was by said collector of customs, to wit, on the fifth day of November, in the year of our Lord one thousand eight hundred and ninety-five, adjudged to be entitled to land at said port as a native born of said United States of Chinese descent, and to be and remain within the said United States; that thereafter and after the said Chin Shee Hung was adjudged to be permitted to land at said port of San Francisco by

said collector of customs, to wit, on the sixth (6) day of November, in the year of our Lord one thousand eight hundred and ninety-five, at said city and county of San Francisco, State and northern district of California, the said Richard S. Williams corruptly and extorsively, for the sake of gain and contrary to the duty of his said office and under color thereof, did extort, receive, and
8 take of said Chan Ying, who was then and there interested in the application or claim of said Chin Shee Hung as aforesaid, a sum of money, to wit, the sum of eighty-five dollars as aforesaid, the said Richard S. Williams, under color of his said office, having previously theretofore, to wit, on the fourth day of November, in the year of our Lord one thousand eight hundred and ninety-five, at said city and county, State and district aforesaid, feloniously and corruptly obtain- and exact- a promise from said Chan Ying for the payment by him to him, the said Richard S. Williams, by then and there falsely and corruptly representing to the said Chan Ying that without the payment thereof to him, the said Richard S. Williams, the said Chin Shee Hung would not be permitted to land at said port, be or remain within the United States, but would be returned to said foreign port whence he came—

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

Second Count.

And the grand jurors aforesaid on their oath aforesaid do further present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the sixth (6) day of November, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being and officer of the Department of the Treasury of the United States, duly appointed and acting under the authority of the law of the said United States, and
9 being then and there a person designated as Chinese inspector of said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, not regarding the duties of his said office, did then and there and under color of his said office, willfully and corruptly demand, take, and receive of one Chan Ying, who was then and there interested in the claim of one Chin Shee Hong to be permitted to land at the port of San Francisco aforesaid, a sum of money, to wit, eighty-five dollars, as and for a fee, compensation, and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of

the application of said Chin Shee Hong, who then and there claimed to the collector of customs at said port to be entitled to land at said port of San Francisco from a foreign port, to wit, the port of Hong Kong, in the Empire of China, and to be and remain in the United States under the claim that he was a native born of the said United States, which said application was then and there pending and under investigation before said collector of customs as aforesaid, whereas in truth and in fact no fee, compensation, or reward was then or at any other time due or owing from the said Chan Ying or any other person to the said Richard S. Williams for such services or any services of him, the said Richard S. Williams, in connection with said matter or at all, nor was he, the said Richard S. Williams,
10 entitled to the same by law—

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

HENRY S. FOOTE,
United States Attorney.

Names of the witnesses examined before the said grand jury on finding the foregoing indictment: Chan Ying, Wong Jim, Wong Sam.

(Endorsed:) A true bill. John F. Merrill, foreman. Presented and filed in open court this 7th day of April, A. D. 1896. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

11 UNITED STATES OF AMERICA, } ss:
Northern District of California, }

To the marshal of the United States of America for the district of California and his deputies or any or either of them, Greeting:

Whereas at a district court of the United States of America for the district of California, begun and held at the city and county of San Francisco, within and for the district aforesaid, on the 7th day of April, in the year of our Lord one thousand eight hundred and ninety-six, the grand jurors in and for the said district brought into the said court a true bill of indictment against Richard S. Williams for extortion and receiving a fee, compensation, or reward, as by the said indictment now remaining on file and of record in said court will more fully appear; to which indictment the said R. S. Williams has not yet appeared or pleaded:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said R. S. Williams and him bring before the said court, at the United States district court-room, in the city and county of San Francisco, to answer the information aforesaid.

Witness the Hon. Wm. W. Morrow, judge of the said district court, and the seal thereof, at the city and county of San Francisco, the 7th day of April, A. D. 1896.

Attest: SOUTHARD HOFFMAN, *Clerk,*
By J. S. MANLEY, *Deputy Clerk.*

H. S. FOOTE, ESQR.,
U. S. Attorney.

11½ UNITED STATES OF AMERICA, }
Northern District of California. }

MARSHAL'S OFFICE.

In obedience to the warrant I have the body of the said Richard S. Williams before the honorable the district court of the United States in and for the northern district of California this 7th day of April, A. D. 1896.

BARRY BALDWIN,
U. S. Marshal,
By J. D. HARRIS,
Deputy U. S. Marshal.

(Endorsed:) Filed April 7th, 1896. Southard Hoffman, clerk.

12 In the United States District Court, Northern District of California.

THE UNITED STATES OF AMERICA }
vs.
RICHARD S. WILLIAMS. }

Now comes said defendant and demurs to the indictment herein and saith as follows:

I.

a. The first count of said indictment does not state facts sufficient to constitute a public offense nor any offense against the laws of the United States.

b. That said first count is uncertain, because it does not state nor can it be determined therefrom—

1. Whether any fee is or is not allowed by law to be charged and received at any time by the said Chinese inspector for any service relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco.

2. What services are alleged to have been claimed to have been rendered by defendant as compensation for which said sum of eighty — dollars is alleged to have been received by defendant.

3. Whether defendant is or is not a subordinate, deputy, or clerk of the said collector of customs.

c. It is ambiguous, for the same reasons stated in paragraph I, subdivision *b*, hereof.

13 *d.* It is unintelligible, for the same reasons stated in paragraph I, subdivision *b*, hereof.

II.

a. The second count in said indictment does not state facts sufficient to constitute a public offense nor any offense against the laws of the United States.

b. That said second count is uncertain, because it does not state nor can it be determined therefrom—

1. Whether any fee is or is not allowed to be charged and received at any time by the said Chinese inspector for any services relating to the coming of Chinese persons or persons of Chinese descent from foreign ports to the United States at said port of San Francisco.

2. What it is alleged the said fee, compensation, or reward was paid to said defendant for, nor what the services were or to whom were rendered for which it is alleged said fee, compensation, or reward *were* received by defendant.

3. Whether defendant is or is not a subordinate, deputy, or clerk of said collector of customs.

c. It is ambiguous, for the same reasons stated in paragraph II, subdivision *b*, hereof.

d. It is unintelligible, for the same reasons stated in paragraph II, subdivision *b*, hereof.

III.

That said indictment as a whole does not state facts sufficient to constitute a public offense nor any offense against the laws of the United States.

14 Wherefore defendant prays judgment that he may be dismissed and discharged from said indictment and go hence without day.

T. C. COOGAN,
Attorney for Defendant.

Service of a copy of the within demurrer admitted this 20th day of April, 1896.

H. S. FOOTE, *U. S. Att'y.*

(Endorsed:) Filed April 20th, 1896. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

15 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 24th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. —.

In this case the demurrer to the indictment this day came on for hearing and was duly argued by T. C. Coogan, Esq., attorney for defendant, in support thereof, and by Bert Schlesinger, Esq., assistant U. S. attorney, in opposition thereto, and submitted to the court for consideration and decision.

16 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 28th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. —.

The demurrer to the indictment herein having been argued and submitted to the court for consideration and decision, now, after due consideration had thereon, it is by the court ordered that said demurrer be, and the same is hereby, overruled, and, on motion of Bert Schlesinger, Esq., assistant U. S. attorney, it is ordered that the defendant appear in court on Tuesday, May 5th, 1896, for arraignment.

17 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 7th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. —.

In this case, the defendant being present in open court, with T. C. Coogan, Esq., and L. I. Mowry, Esq., his attorney-, by order of the court, on motion of Bert Schlesinger, Esq., assistant U. S. attorney, the defendant was duly arraigned upon the indictment on file herein against him, and to which indictment he then and there pleaded not guilty.

18 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 10th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. —.

The motion of the U. S. attorney to consolidate the indictment herein with the indictment in case numbered 3267—United States *vs.* Richard S. Williams—having been heretofore submitted to the court for decision, now, after due consideration had thereon, it is by

the court ordered that the indictment herein be, and the same is hereby, consolidated with the indictment in case numbered 3267—United States *vs.* Richard S. Williams.

19 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 19th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } No. 3267, 3268, Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys, being present in open court, Bert Schlesinger, Esq., assistant U. S. attorney, and Barclay Henley, Esq., special assistant U. S. attorney, being also present, on motion of Mr. Schlesinger, it is ordered that the trial hereof do now proceed; and thereupon the court proceeded to impanel a jury to try this case as follows: C. S. Benedict, accepted and sworn; Joseph Simonson, accepted and sworn; Bryon Mauzy, challenged peremptorily by defendant and excused; Henry J. Crocker, accepted and sworn; J. F. Cunningham, accepted and sworn; Charles A. Warren, chal-enged peremptorily by U. S. and excused; H. N. Tilden, accepted and sworn; Augustus F. Lawton, accepted and sworn; Isaac Y. Doane, challenged peremptorily by defendant and excused; Alfred A. Gore, challenged peremptorily by defendant and excused; Moses J. Frank, challenged peremptorily by defendant and excused; Orlando H. Bogart, accepted and sworn; W. B. Bradford, accepted and sworn; P. S. Teller, accepted and sworn; W. T. Y. Schenck, accepted and sworn; Benjamin F. Harville, accepted and sworn; J. S. Emery, challenged peremptorily by defendant and excused; Christian Engelbretson, accepted and sworn; and, the jury being completed and composed of the following-named persons: C. S. Bennedict, H. N. Tilden, P. S. Teller, Joseph Simonson, Augustus F. Lawton, W. T. Y. Schenck, Henry J. Crocker, Orlando H. Bogart, Benjamin F. Harville, J. F. Cunningham, W. B. Bradford, and Christain Engelbretson, on motion of Mr. Mowry, it is ordered that all witnesses be, and they are hereby, placed under the rule. Mr. Henly thereupon made opening statement on behalf of the United States, and, by agreement of the attorneys, Carlton Rickards was duly sworn as the interpreter of the Chinese language in this case. Mr. Henly called John Lynch and Dong Tung, who were duly sworn and examined as witnesses on behalf of the United States; and pending the examination of Dong Tung, who was ordered to be in attendance upon the court on Thursday, August 20th, 1896, at eleven o'clock a. m., the further trial hereof was continued until Thursday, August 20th, 1896.

20 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 20th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } No. —. Indictments Nos. 3267, 3268, Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys, the jury sworn to try this case, Barclay Henly, Esq., special assistant U. S. attorney, and Bert Schlesinger, assistant U. S. attorney, being present in open court, the trial hereof was resumed.

Dong Tung, the witness under examination on behalf of the United States, having been ordered to be and appear in court this day at eleven o'clock a. m., and failing to appear as commanded, was duly called at the door of the court-room, and, failing to appear or answer, it is ordered that an attachment issue for the said Dong Tung, to have him before the court forthwith to show cause why he should not be punished for contempt of court.

And it appearing that J. J. Tobin has been duly subpœnaed to appear in court at eleven o'clock this day as a witness on behalf of the United States, and upon being duly called at the door of the court-room, and failing to appear or answer, it is ordered that an attachment issue for the said J. J. Tobin, to have him before the court forthwith to show cause why he should not be punished for contempt of court.

Mr. Henley then called Wong Sam, who was duly sworn and examined as a witness on behalf of the United States, and pending the examination of said Wong Sam the court took a recess until two o'clock p. m. of this day, and commanding the said Wong Sam to return and be in attendance at two o'clock p. m.

And at the reconvening of the court at two o'clock p. m., the said Wong Sam failing to appear or answer upon being duly called, it is ordered that an attachment issue for the said Wong Sam, to have him before the court forthwith to show cause why he should not be punished for contempt of court.

The U. S. marshal having produced the body of J. J. Tobin in open court, and the said J. J. Tobin having purged himself of any contempt, by the court ordered that the said attachment for said Tobin be discharged, and that the said Tobin be released from custody.

Mr. Henley then called Henry C. Dibble, who was duly sworn and examined as a witness on behalf of the United States, and after examination the witness was excused from attendance, the defendant reserving the right for further cross-examination.

The U. S. marshal having produced the body of Dong Tung in open court, in obedience to the attachment issued, it is by the court

ordered that the said Dong Tung be committed to the custody of the U. S. marshal pending the matter of his contempt of court.

The U. S. marshal having produced the body of Wong Sam in open court, in obedience to the attachment issued, it is by the court ordered that the said Wong Sam be committed to the custody of the U. S. marshal pending the matter of his contempt of court.

21 The cross-examination of Wong Sam was thereupon proceeded with, and — temporarily excused, the defendant reserving the right to further cross-examine the said Wong Sam.

And the said Wong Sam having purged himself of any contempt, by the court ordered that the said attachment for said Wong Sam be discharged, and that the said Wong Sam be released from custody.

The examination of Dong Tung was thereupon resumed and concluded.

Mr. Henley then called Chin Deck, who was duly sworn and examined as a witness on behalf of the United States, and pending the examination of Chin Deck the further trial hereof was continued until Friday, August 21st, 1896.

22 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 21st day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } No. 3267, 3268, as Consolidated for Trial.

In this case the defendant, with T. C. Coogan, Esq., and L. I. Mowry, Esq., his attorneys; the jury sworn to try this case, Barclay Henley, Esq., special assistant U. S. attorney, and Bert Schlesinger, Esq., assistant U. S. attorney, being present in open court, the trial hereof was resumed. The examination of Chin Deck, a witness on behalf of the United States, was resumed and concluded. Called J. J. Tobin, Chin Ying, and Wong Kew Kim, who were duly sworn and examined as witnesses on behalf of the United States; and pending the examination of Wong Kew Kim the further trial hereof was continued until Monday, August 24th, 1896.

23 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 24th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. The examination of Wong Kew Kim, a witness on behalf of the United States, was resumed and concluded. Mr. Henley recalled Wong Sam, who was further examined as a witness on behalf of the United States, and called David D. Jones, who was duly sworn and examined as a witness on behalf of the United States, and recalled Chin Ying, who was further examined as a witness on behalf of the United States. Mr. Henley then called Wong Gim, and it appearing that Wong Gim has been duly subpœnaed to attend as a witness on behalf of the United States, and upon being duly called at the door of the court-room, and failing to appear or answer, it is ordered that an attachment issue for the said Wong Gim, requiring the U. S. marshal to have the said Wong Gim before the court forthwith to show cause why he should not be punished for contempt of court; and thereupon the further trial hereof was *was* continued until Tuesday, August 25th, 1896.

24 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 25th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Henley called William W. Van Pelt and George C. Bartlett, who were duly sworn and examined as witnesses on behalf of the United States, and recalled J. J. Tobin and John Lynch, who were further examined as witnesses on behalf of the United States, and called Washington Irving, J. Philip Amos, Daniel Einstein, George W. Lee, and Patrick Fitzsimmons, who were duly sworn and examined as witnesses on behalf of the United States; and thereupon the further trial hereof was continued until Wednesday, August 26th, 1896.

25 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 26th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Henley called Geo. E. Lawrence, E. B. Jerome, who were duly sworn and examined as witnesses on behalf of the United States, and recalled John Lynch, who was further examined as a witness on behalf of the United States, and Wong Sam was recalled for further cross-examination; and thereupon the Government rested; and thereupon Mr. Mowry made opening statement on behalf of the defendant and called Ong Chee, Jow Pong Dong Wing, alias Dong Dock Bow, Chin Toy, and Hom Teung, who were duly sworn and examined as witnesses on behalf of the defendant, and pending the examination of Hom Teung the further trial hereof was continued until Thursday, August 27th, 1896.

26 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 27th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In this case the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. The examination of Hom Teung, a witness on behalf of the defendant, was resumed and concluded, and Mr. Mowry called Lim You, John Lynch, Quan Quock Wak, Chin Toy, H. S. Hutchings, A. S. Newburgh, Geo. W. Duffield, Jr., Andrew Hornsman, J. S. Manley, A. L. Farish, Samuel J. Rudell, and Thomas F. McGrath, who were duly sworn and examined as witnesses on behalf of the defendant; and thereupon the further trial hereof was continued until Monday, August 31st, 1896.

And by the court ordered that witnesses be, and they are hereby, excused from attendance upon court until Monday, August 31st, 1896, at eleven o'clock a. m.

27 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 31st day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barcaly Henley, Esq., and Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Mowry called John R. Fairchild, John T. Cosgrove, Gee Gam, John H. Wise, Gong Tyng, Harry Cook, T. D. Riordan, Richard S. Williams, and Jeung Chung, who were duly sworn and examined as witnesses on behalf of the defendant, and rested. Mr. Henley called Jue Lee, John Lynch, Ng Chung Dip, Wong Ling, Wm. T. Boyce, who were duly sworn and examined as witnesses on behalf of the United States in rebuttal.

And it appearing that Cha. L. Weller has been duly subpœnaed to appear in court as a witness on behalf of the United States, and upon being duly called at the door of the court-room, and failing to appear or answer, it is ordered that an attachment issue for the said Charles L. Weller, to have him before the court forthwith to show cause why he should not be punished for contempt of court.

And later the U. S. marshal having produced the body of said Cha. L. Weller in open court, and the said Weller having purged himself of any contempt of court, it is by the court ordered that the said attachment be, and the same is hereby, discharged and the said Weller be released from custody.

Mr. Henley thereupon called Charles L. Weller, who was duly sworn and examined as a witness on behalf of the United States in rebuttal; and thereupon the further trial hereof was continued until Tuesday, September 1st, 1896.

28 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 1st day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Schlesinger called E. H. Heacock, Benj. T. Harrison, Frederick James Masters, Ira M. Condit, J. J. Tobin, who were duly sworn and examined as witnesses on behalf of the United States in rebuttal, and rested. Mr. Mowry recalled John H. Wise, who was examined as a witness on behalf of the defendant in surrebuttal, and rested. The case was then argued by Mr. Schlesinger on behalf of the United States, and by Mr. Coogan and Mr. Mowry on behalf of the defendant, and pending the argument of Mr. Mowry the further trial hereof was continued until Wednesday, September 2d, 1896.

29 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 2nd day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with T. C. Coogan, Esq., and Lyman I. Mowry, Esq., his attorneys; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try this case being present in open court, the trial hereof was resumed. Mr. Mowry proceeded with and concluded the closing argument on behalf of the defendant, and Mr. Henley proceeded and concluded his closing argument on behalf of the United States, and pending the argument of Mr. Henley the further trial hereof was continued until Thursday, September 3rd, 1896, at 10 a. m.

30 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 3rd day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS.
} Nos. 3267, 3268, as Consolidated for Trial.

In these cases, as consolidated for trial, the defendant, with Lyman I. Mowry, Esq., his attorney; Barclay Henley, Esq., special assistant U. S. attorney; Bert Schlesinger, Esq., assistant U. S. attorney, and the jury sworn to try these cases being present in open court, the trial hereof was resumed. Mr. Henley then proceeded with and concluded his argument on behalf of the United States, and the case was submitted. The court then charged the jury, who, at 11.47 a. m., retired to deliberate upon a verdict, and subsequently, at 12.20 p. m., returned into court and, upon being asked if they had agreed upon a verdict, rendered a written verdict and said: "We find Richard S. Williams, the prisoner at the bar, guilty of the charges as laid in the indictments numbered 3267 and 3268," and so said they all. On motion of Mr. Schlesinger, it is ordered that the defendant be committed to the custody of the U. S. marshal to await sentence; and further ordered that the jurors be, and they are hereby, excused from further consideration of this case, and excused from attendance until Monday, September 21st, 1896, at eleven o'clock a. m.; and on motion of Mr. Schlesinger it is ordered that the prisoner be produced in court on Thursday, September 10th, 1896, for sentence.

31 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 11th day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS.
} Nos. 3267, 3268, as Consolidated for Trial.

In these cases the defendant, with Geo. D. Collins, Esq., his attorney; Barclay Henley, Esq., special assistant U. S. attorney, and Bert Schlesinger, Esq., assistant U. S. attorney, being present in open court, Mr. Schlesinger moved for judgment on the verdict, and thereupon Mr. Collins interposed a motion in arrest of judgment on the second count of each of the indictments numbered 3267 and 3268, and also a motion for a new trial herein, and said motions were thereupon duly argued by Mr. Collins in support thereof; and thereupon the further hearing of said motions *were* continued until Saturday, September 12th, 1896.

32 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Saturday, the 12th day of *Saturday*, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

THE UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } Nos. 3267, 3268, as Consolidated.

In this case the defendant, with Geo. D. Collins, Esq., his attorney; Barclay Henley, Esq., special assistant U. S. attorney, and Bert Schlesinger, Esq., assistant U. S. attorney, being present in open court, Mr. Henley proceeded with and concluded his argument in opposition to the motion of the defendant in arrest of judgment as to the second count of each of the indictments numbered 3267 and 3268 and the motion of defendant for a new trial herein, and was followed by Mr. Collins, who made closing argument in support of said motions, and said motions were thereupon submitted to the court for consideration and decision.

33 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 22nd day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Wm. W. Morrow, judge.

UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } No. 3268.

In this case the defendant, with George D. Collins, Esq., his attorney; Barclay Henley, Esq., special assistant U. S. attorney, and Bert Schlesinger, Esq., assistant U. S. attorney, being present in open court, the motion of defendant to arrest the judgment herein as to second count of the indictment having been heretofore submitted to the court for consideration and decision, now, after due consideration had thereon, it is by the court ordered that said motion be, and the same is hereby, allowed; and it is hereby ordered that judgment be, and the same is hereby, arrested on said second count of the indictment.

And the motion for a new trial herein having been heretofore submitted to the court for consideration and decision, now, after due consideration had thereon, it is by the court ordered that motion for a new trial herein be, and the same is hereby, denied.

The prisoner was thereupon called for sentence, and upon being asked if he had anything to say why sentence should not be pronounced upon him according to law, and nothing appearing why sentence should not be pronounced, it is by the court now here ordered and adjudged that Richard S. Williams, for feloniously, etc., extorting, etc., and taking of one Chan Ying the sum of eighty-five dollars ($85.00), under color of his office as Chinese inspector of the Department of — Treasury at the port of San Francisco, State of California, of which he stands convicted, be, and he is
34 hereby, sentenced to pay a fine of five thousand dollars ($5,000.00) and to be imprisoned for the term of three years, to date from the expiration of the sentence pronounced upon him,

the said Richard S. Williams, in the case entitled "United States of America *vs.* Richard S. Williams," No. 3267, this day, and in default of the payment of said fine to be further imprisoned until the same be paid or until he be otherwise discharged by due process of law.

And it is further ordered and adjudged that said sentence of imprisonment be executed upon the said Richard S. Williams until the other or further order of the court by imprisonment in the State prison of the State of California, at San Quentin, Marin county, State of California.

And to which order and judgment the defendant, by his attorney, then and there duly excepted.

35 In the District Court of the United States in and for the Northern District of California.

THE UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } Two Indictments, Nos. 3267 & 3268.

Opinion on Motion in Arrest of Judgment.

Geo. D. Collins, Esq., attorney for defendant.
Barclay Henley, Esq., special attorney for the United States.
Bert Schlesinger, Esq., assistant U. S. district attorney.

MORROW, *District Judge:*

The two indictments upon which the defendant has been found guilty contain each two counts. In all four of these counts it is charged that the defendant was an officer of the Department of the Treasury of the United States, duly appointed and acting under the authority of the laws of the United States, and designated as Chinese inspector at the port of San Francisco, and by virtue of his office authorized, directed, and required to aid and assist the collector of customs at said port in the enforcement and carrying out of the various laws and regulations of the United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco.

The indictments are founded upon section 3169 of the Revised Statutes and section 23 of the act of February 8, 1875. Section 3169 of the Revised Statutes provides that "every officer or agent appointed and acting under the authority of any revenue law
36 of the United States—

First. Who is guilty of any extortion or willful oppression under color of law; or—

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compen-ation, or reward, except as by law prescribed, for the performance of any duty, * * * shall be held guilty," etc.

Section 23 of the act of February 8, 1875 (18 Stat. at Large, 307), provides as follows: "That all acts and parts of acts imposing fines,

penalities, or other punishment for offenses committed by an internal-revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever employed, appointed, or acting under the authority of any internal-revenue or customs law, or any revenue provisions of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money."

It is contended, in arrest of judgment, that neither of the indictments states a case within either of the foregoing provisions of law:

First. Because it appears that the defendant was designated and employed under the laws of the United States relating to the exclusion of Chinese laborers, and was not an officer or agent appointed and acting under the authority of any revenue law of the United States.

Second. He was not employed, appointed, or acting under the authority of any customs law of the United States.

The office of Chinese inspector is not known to the law by
37 that title, nor is the defendant so charged in the indictment.

He is charged as being an officer of the Department of the Treasury of the United States, appointed and acting under the authority of the laws of the United States, and designated as Chinese inspector. The authority for his appointment at the port of San Francisco is found in section 2606 of the Revised Statutes, providing for the appointment, at certain ports of the United States, of such number of weighers, gaugers, measurers, and inspectors as may be necessary. This section is in that title of the Revised Statutes relating to the "collection of duties upon imports." An inspector of customs is a public officer. Hooper *et al. vs.* Fifty-one Cases of Brandy, 2 Ware, 371; 12 Fed. Cas., 465.

The act of May 6, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," provided in section 8 that the master of any vessel arriving in the United States from any foreign port or place before landing or permitting to land any Chinese passengers shall deliver and report to the collector of customs of the district in which the vessel has arrived a list of all Chinese passengers taken on board his vessel at any foreign port or place and all such passengers on board the vessel at that time, together with certain particulars as to name, etc. The list was to be sworn to by the master in the manner required by law in relation to the manifest of the cargo, and any willful refusal or neglect to comply with this requirement incurred the same penalties and forfeiture provided for a refusal or neglect to report and deliver a manifest of the cargo.

Section 9 made it the duty of the collector or his deputy to examine such Chinese before landing, comparing the certificate
38 issued under the act with the list and with the passengers, and no passenger should be allowed to land in the United States from such vessel in violation of law.

Section 10 provided that every vessel whose master should know-

ingly violate any of the provisions of the act should be deemed forfeited to the United States, and should be liable to seizure and condemnation in any district of the United States into which the vessel might enter or in which she might be found. The enforcement of the provisions of this act relating to the coming of Chinese persons to the United States was thus placed in charge of the collector of customs and the officers of that department. Congress has often passed acts forbidding the immigration of particular classes of foreigners, and has committed the execution of these acts to the Secretary of the Treasury, to collectors of customs, and to inspectors acting under their authority. Nishimura Ekiu *vs.* United States, 142 U. S., 651, 659. In the several acts making appropriations for the sundry civil expenses of the Government for the year 1891 and subsequent years there has been an appropriation for the enforcement of the Chinese exclusion act, under the Treasury Department, in the following terms: "To prevent unlawful entry of Chinese into the United States by the appointment of suitable officers to enforce the laws in relation thereto, and for the purpose of returning to China all Chinese persons found to be unlawfully within the United States."

The defendant, although appointed an inspector under the customs law, was designated and acting as an officer under the laws relating to Chinese immigration. He was a revenue officer required to perform duties not strictly of a revenue character,
39 but duties of an official character imposed upon him by law. This, I think, is sufficient to bring the defendant within the provisions of section 23 of the act of February 8, 1875, where a person appointed under the authority of a customs law and designated or acting as an officer is made subject to the fines, penalties, or other punishment imposed for offenses committed by any officer of the Treasury Department. It in effect reaches all persons appointed, employed, or acting under the authority of any revenue or customs law when acting officially in the performance of duties imposed upon them by laws, whether such duties are strictly of a revenue character or pertain to some other branch of the public service, but which Congress, for convenience or the economy of administration, has seen fit to impose upon such officers.

The motion is further directed specifically to the second counts in both indictments, on the ground that they do not charge an offense under the statute, for the reason that they do not allege that the money was extorted under color of law and because it does not appear that the compensation and reward alleged to have been received by the defendant was for the performance of any duty.

The second subdivision of section 3169 of the Revised Statutes is directed against the officer or agent "who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty." The indictment charges that the defendant "did * * * under *of* color of his said office willfully and corruptly demand, take, and receive of one Chan Ying, who

was then and there interested in the claim of one Chin Shee
40 Hong to be permitted to land at the port of San Francisco,
* * * a sum of money, to wit, eighty-five dollars, as and for a fee, compensation, and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of the application of said Chin Shee Hong, who then and there claimed to the collector of customs at said port to be entitled to land at said port of San Francisco from a foreign port, * * * whereas in truth and in fact no fee, compensation, or reward was then or at any other time due or owing from the said Chan Ying or any other person to the said Richard S. Williams for such services or any services of him, the said Richard S. Williams, in connection with said matter or at all, nor was he, the said Richard S. Williams, entitled to the same by law."

With respect to the form of an indictment charging a statutory offense, "It is not always necessary that the precise words of the statute should be employed in the allegations, but their equivalents will often answer. Still the doctrine seems to be that enough of the exact words must be used to identify the statute on which the indictment is drawn, and when enough of such exact words are not used, though equivalent ones are, it will be insufficient." Bishop on Statutory Crimes, sec. 380. There is another rule which requires, in many cases and in various particulars, that the allegations of the indictment should be broader than the words of the statute on which it is drawn, that the crime may be charged with precision and certainty and every ingredient of which it is composed accurately and clearly alleged. Evans *vs.* United States, 153 U. S., 584. The two counts to which thes- objections are directed do not follow the precise words of the statute, and for the very good
reason that, under the rule just stated, such words would
41 not be sufficient; but in departing from the exact words of the statute, and alleging particulars deemed necessary to describe the offense under its provisions, have equivalent words been used and has the real intent and purpose of the statute been followed? For the word "knowingly," contained in the statute, the indictment substituted the words "willfully and corruptly." Possibly these latter words may be deemed the equivalent of the word "knowingly," but this last word has a well-known technical meaning in criminal statutes, and, when so used, its omission from the indictment founded upon such a statute is in the direction of uncertainty and the want of precision. The charge in both of the second counts of the indictment is that the defendant acted under color of office in demanding, taking, and receiving a fee, compensation, and reward for his services. It is further charged that no fee, compensation, or reward was then or at any other time due or owing to the said Richard S. Williams. The act here described is therefore properly charged as having been committed under color of office. An act done under color of office is a pretense of official right, made by one who has no such right. 1 Bouvier's Dictionary, 293; Burrall *vs.* Acker, 23 Wend., 608. But it is further charged

that the services of the defendant were also under color of office, while the statute now under consideration is directed against officers and agents who demand or receive illegal compensation for "the performance of a duty." Clearly, the indictment, in departing from the words of the statute, has omitted its most material provision, and instead of charging the offense with more precision and certainty, it has charged something else. Services rendered under color of office are not rendered in the performance of a duty,
42 and the second counts of the two indictments are therefore defective in this particular, and judgment on these counts must be arrested. With respect to the first counts of the two indictments, the motion is denied for the reasons first stated.

(Endorsed:) Filed Sept. 22nd, 1896. Southard Hoffman, clerk.

43 UNITED STATES OF AMERICA, }
Northern District of California, } ss:

The President of the United States to the marshal of the United States for the northern district of California, Greeting:

Whereas, at the July (1896) term of the district court of the United States of America for the northern district of California, held at the court-room of said court, in the city and county of San Francisco, in said district, to wit, on the 3rd day of September, A. D. 1896, Richard S. Williams was convicted of feloniously, etc., extorting, etc., and taking of one Chan Ying the sum of eighty-five dollars under color of his office as Chinese inspector of the Department of the Treasury at the port of San Francisco, State of California, committed on or about the 6th day of November, 1895, at the port and city & county of San Francisco, State of Cal., and within the jurisdiction of said court, contrary to the form of the statutes of the United States in such case made and provided and against the peace and dignity of the said United States;

And whereas, on the 22nd day of September, A. D. 1896, being a day in the said term of said court, said Richard S. Williams was for said offense, of which he stood convicted as aforesaid by the judgment of said court, ordered to pay a fine of $5,000.00 and to be imprisoned for the term of three years, to date from the expiration of the sentence of the said R. S. Williams in the cause entitled U. S. *vs.* R. S. Williams, No. 3267 of the U. S. Dist. Crt., &c., and in default of the payment of said fine to be further imprisoned until the same be paid or until he be otherwise discharged by due process of law; and it was further ordered by the court that said sentence of imprisonment be executed upon the said Richard S. Williams, until the other or further order of the court, by imprisonment in the State prison of the State of California, at San Quentin, county of Marin, State of California:

Now, this is to command you, the said marshal, to take and keep and safely deliver the said Richard S. Williams into the custody of

the keeper or warden or other officer in charge of said State prison forthwith.

And this is to command you, the said keeper and warden and other officers in charge of the said State prison, to receive from the United States marshal of said northern district of California the said Richard S. Williams, convicted and sentenced as aforesaid, and him, the said Richard S. Williams, keep and imprison for the term of three years, to date from the expiration of the sentence of the said R. S. Williams in the cause entitled U. S. *vs.* R. S. Williams, No. 3267 of the U. S. Dist. Crt., &c., and in default of the payment of said fine of $5,000.00 further keep and imprison said Richard S. Williams until the said fine be paid or until he be otherwise discharged by due process of law.

Herein fail not.

Witness the Hon. Wm. W. Morrow, judge of the district court of the United States for the northern district of California, and the seal thereof, at San Francisco, in the said district, on the 22nd day of September, A. D. 1896.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of said District Court,
By —— ——, *Deputy Clerk.*

The within warrant of commitment was received by me on the 25th day of September, 1896, and is returned executed this 25th day of September, 1896.

BARRY BALDWIN,
U. S. Marshal,
By T. J. GALLAGHER, *Deputy.*

STATE PRISON, CALIFORNIA.

I hereby certify that Barry Baldwin, U. S. marshal for the northern district of California, has this day delivered to the prison Richard S. Williams, a convict who was sentenced in the U. S. district court for the northern district of California on the 22nd day of September, 1896, to be imprisoned in the State prison for the term of six (6) years and to pay a fine of ten thousand dollars, for the crime of feloniously extorting the sum of one hundred and eighty-five dollars under color of his office as Chinese inspector at the port of San Francisco, as appears by the certificate of the clerk of said court, now on file in the office of this prison.

In witness whereof I have hereunto set my hand and affixed the seal of the prison this 25th day of September, A. D. 1896.

2 commitments.

[SEAL.] W. E. HALE, *Warden.*

(Endorsed:) Issued Sept. 22nd, 1896. Filed on return September 25th, 1896. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

44 UNITED STATES OF AMERICA, *Northern District of California,* } ss:

UNITED STATES OF AMERICA *vs.* RICHARD S. WILLIAMS. } 3267, 3268, Consolidated.

To the Honorable W. W. Morrow, judge of the district court of the United States, northern district of California:

The petition of Richard S. Williams respectfully shows that on the 22nd day of September, 1896, the said district court rendered its judgment herein against your petitioner, sentencing him to imprisonment in the State prison, at San Quentin, for the period of three years and a fine of five thousand dollars in case No. 3267, and for the period of three years and to the payment of a fine of five thousand dollars in case No. 3268.

That the said United States of America is the complainant herein and the said Richard S. Williams is the defendant.

That the said judgment is final; that your petitioner claims a writ of error herein against said judgment upon the grounds of errors in law committed by the said district court in overruling the defendant's demurrers to the indictments in said consolidated actions; in overruling the defendant's objection to the admission of the affidavit of defendant filed in the superior court in and for the city and county of San Francisco, State of California, in the suit there pending, entitled "Isabella M. Williams, plaintiff, *vs.* Richard S. Williams, defendant;" in overruling the defendant's ob-
45 jection to the admission in evidence of the bank book and deposits recited therein standing in the name of defendant in the San Francisco Savings Union; in overruling defendant's objection to the admission in evidence of the bank book and deposits recited therein standing in the name of Isabella M. Williams in the Hibernia Savings and Loan Society; in overruling the objection to the remarks of the prosecuting attorney, Mr. Henley, that "no doubt, every Chinese woman who did not pay Williams was sent back;" in overruling the objection to the admission in evidence of the testimony of Jno. J. Tobin relative to the reputation of defendant in the custom-house; in overruling the objection to the questions put by the prosecution to Ling Yow relative to whether he had been in San Quentin, whether he had been tried in Los Angeles on a criminal charge of perjury, and whether the verdict of the jury in that case was guilty or not guilty. In each instance the court erred in instructing the jury relative to the said bank deposits and the effect of the defendant's failure to explain said deposits and the necessity of his explaining the whole thereof. The court also erred in rendering judgment and sentence on the verdict and indictments herein in case No. 3267. The court also erred in rendering judgment and sentence on the verdict and indictment herein in case No. 3268. The court erred in its judgment and sentence herein; that the evidence is insufficient to justify the verdict in case No.

3267. The court erred in making an order consolidating the indictments in said cases 3267 and 3268. The defendant was not convicted herein by due process of law. All of which errors appear affirmatively from the record and proceedings herein, to
46 which reference is hereby made; that said errors are to the great damage of your petitioner, and he therefore prays that he be allowed a writ of error herein and such other process as will enable him to obtain a review of the case and a correction of said errors by the Supreme Court of the United States; and your petitioner will ever pray, etc.

GEORGE D. COLLINS,
Counsel for Petitioner.

Upon the foregoing petition it appears that the writ of error prayed for of right ought to issue. It is therefore ordered that said writ of error be, and the same hereby is, allowed, and the petitioner is ordered to furnish upon said writ a bond for costs and damages in the penal sum of five hundred dollars.

WM. W. MORROW,
Judge of the District Court of the United States, Northern District of California.

Dated September 23rd, 1896, at San Francisco, in the State of California.

(Endorsed:) Filed Sept. 23rd, 1896. Southard Hoffman, clerk.

47 *Assignment of Errors.*

RICHARD S. WILLIAMS, Plaintiff,
vs.
UNITED STATES OF AMERICA, Defendant. } Case No. 3267. In Error.

Of October term, in the year of our Lord one thousand eight hundred and ninety-five.

Afterwards, to wit, on the 23rd day of September, 1896, in this same term, before the justices of the Supreme Court of the United States of America, at the Capitol, in the city of Washington, comes the said Richard S. Williams, by Mr. George D. Collins, his counsel, and says that in the record and proceedings in the consolidated actions of The United States *vs.* Richard S. Williams, Nos. 3267 and 3268, in the district court of the United States, northern district of California, there is manifest error in this, to wit, that the said district court erred in overruling the demurrers to the indictment in said consolidated actions; that there is error also in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the admission in evidence of the following affidavit, viz:

In the Superior Court of the City and County of San Francisco, State of California.

ISABELLA M. WILLIAMS, Plaintiff,
vs.
RICHARD S. WILLIAMS, Defendant.

48 STATE OF CALIFORNIA, *City and County of San Francisco,* } *ss:*

Richard S. Williams, being first duly sworn, deposes and says: I have read the affidavit of plaintiff in reply, on her motion for alimony, &c., and in reply thereto I desire to say: It is untrue that prior to the time I entered the employment of the United States Government I was without means and had had no money for quite a time before, or that I had to borrow money to pay for my living expenses. On the contrary, when I entered the employment of the United States Government, on or about the 28th day of September, 1893, I was worth more money then than I am at the present time, being worth about $5,000.00, and since then having inherited some property; that the $3,000.00 referred to in said affidavit was not acquired by me during the time that I was in the employment of the United States Government, as set forth in said affidavit, but is a portion of the $5,000 heretofore referred to.

The statement in said affidavit that I have in my possession or had in my possession, in addition to the said sum of $3,000 aforesaid, the sum of $5,000 instead of $4,000 is false and untrue; that to my knowledge plaintiff was not in the habit of carrying said sum of $5,000 in the bosom of her dress. On the contrary, there was on deposit in the Hibernia Savings and Loan Society in her name, belonging to me, the sum of about $4,000, which was a part of the $5,000 possessed by me at the time I entered the employment of the United States Government. The $3,000 in bank referred to is a portion of said sum so deposited in the name of plaintiff in the Hibernia Savings and Loan Society.

In answer to the statement contained on page 2 of said affidavit, to the effect that plaintiff paid for the piano therein re-
49 ferred to, and the bill therefor was made out in her name, I simply desire to annex the bill for said piano to this affidavit, showing the bill to be made out in the name of R. S. Williams.

The property at Nos. 420 and 422 Scott street, mentioned on page 2 of said affidavit, was acquired by my stepfather, Henry Monsferran, now deceased. He was a foreigner, unaccustomed to speaking the English language, and the details of the purchase were made by me, but the money that paid for said property was solely and exclusively the money of the said Henry Monsferran. The deed to the property was taken in his name.

It is untrue that at the time plaintiff left our residence, on the 29th day of April, 1896, she left said sum of $5,000 in greenbacks. On the contrary, as above stated, there was no such sum, and the

money referred to by her as having been drawn from the Hibernia Savings and Loan Society is $3,000, so deposited in the savings bank.

It is untrue, as stated in said affidavit, that I avoided the service of the summons and complaint in this action, or that by reason thereof plaintiff incurred an expenditure of $11.25.

RICHARD S. WILLIAMS.

Subscribed and sworn to before me this 1st day of June, A. D. 1896.

[SEAL.] LEE D. CRAIG,
Notary Public in and for the City and County of San Francisco, State of California.

Kohler & Chase, dealers in pianos and organs, musical instruments, &c., &c.

SAN FRANCISCO, *Jan.* 23, 1896.

50 Sold to R. S. Williams, 422 Scott St.

98,973, 1 Fischer, st*o*ll, and cover $410 00

Paid.

KOHLER & CHASE.

Jan. 23, 1896.

Endorsed: Filed June 1st, 1896. C. F. Curry, clerk, by Geo. W. Lee, deputy clerk.

That there is error, also, in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the admission in evidence of a certain bank book of deposit in the San Francisco Savings Union, a banking corporation of the State of California, which book of deposit is in the name of plaintiff in error and shows the following deposits of money by him in said bank and on the dates herein mentioned, to wit:

October 29, 1895, $350; November 18, 1895, $400; December 17, 1895, $550, making a total of $1,300.

That there is also error in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the admission in evidence of a certain book of deposit in the Hibernia Savings and Loan Society, a banking corporation of the State of California, which book of deposit is in the name of Isabella M. Williams and shows the following deposits made by her in said Hibernia bank and on the dates herein mentioned, to wit, September 10, 1895, $3000; September 24, 1895, $150; October 8, 1895, $800; October 23, 1895, $500; November 12, 1895, $700; December 2, 1895, $1,000, making a total of $3,450; that there is also error in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the remarks of the prosecuting attorney, Mr. Henley, in the course

51

of the examination of John H. Wise, a witness for the defense, when said prosecuting attorney, in the hearing of the jury, said, in reference to plaintiff in error, "No doubt, every Chinese woman who did not pay Williams was sent back," thereby prejudicing the jury against plaintiff in error and preventing him from having a fair trial; that there is also error in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the admission in evidence of the testimony of Jno. J. Tobin that he knew the reputation of plaintiff in error for truth, honesty, and integrity in the custom-house, and that such reputation is bad; that there is also error in this, to wit, that the said district court erred in overruling the objection of plaintiff in error to the questions put by the prosecution to Ling Yow, a witness for the defense, which questions were as to whether said Ling Yow had ever been in San Quentin, whether he had been tried in Los Angeles on a criminal charge of perjury, and whether the verdict of the jury in the case was guilty or not guilty; that there is also error in this, to wit, that the said district court erred in instructing the jury as follows, viz:

"There has been some testimony introduced in support of the "allegations of these indictments respecting the pecuniary condi- "tion of the defendant, and also testimony as to the extent of his "compensation by the Government for services. This evidence was "admitted in compliance with a well-known rule which established
"the relevance of evidence of this character where the charge
52 "is such as that alleged in these indictments.

"If the salary of the defendant during the time alleged in "the indictments and before then was four or five dollars per day, "and if the testimony shows to your satisfaction that he has de- "posited in bank, or there was deposited to his credit in bank, in "the neighborhood of $4,750 from September 10th to December 17th, "1895, alleged in the indictments, then such testimony may be con- "sidered by you with a view of ascertaining how or by what means "the defendant obtained that amount of money at a time when his "compensation by the Government, as is claimed by the prosecu- "tion, was not to exceed about $150.00 per month.

"Where did he get such large sums of money? From what "source other than the source named in the indictments did he ac- "quire this money? Has he furnished evidence explaining to "your satisfaction the possession of these sums of money?

"These are all questions which you will consider, and if any ex- "planation made by the defendant as to how he came by this money "seems incredible, irrational, and unsatisfactory you are at liberty "to reject it and to act upon the other testimony in the case. If, "after doing all this, you feel to a moral certainty and beyond a "reasonable doubt that he took the money as alleged in the indict- "ments, then your verdict should be guilty.

"In reference to the testimony which has been introduced in the "case showing the pecuniary condition of the defendant, that if tes- "timony explaining how, when, and by what means the defendant "acquired possession of the sums of money shown to have been de-

"posited in the San Francisco Savings Union and Hibernia bank
"could have been offered by the defendant and he failed to produce
"such testimony, then such failure may very properly be
53 "taken into consideration by the jury in determining the
"defendant's guilt or innocence.

"Where probable proof is brought of a state of facts tending to
"criminate the accused, the absence of evidence tending to a con-
"trary conclusion may be considered, although this attitude of the
"case alone would not be entitled to much weight, because the
"burden of proof lies on the prosecution to make out the whole
"case by sufficient evidence; but when proof of inculpating cir-
"cumstances had been produced tending to support the charge, and
"it is apparent that the accused is so situated that he could offer
"evidence of all the facts and circumstances as they existed, and to
"show, if such was the truth, that the suspicious circumstances can
"be accounted for consistently with his innocence, and he fails to
"offer such proof, the natural conclusion is that the *the* proof, if
"produced, instead of rebutting, would tend to sustain the charges.
"Therefore, if in this case the defendant could have produced testi-
"mony explaining his several deposits in the San Francisco Sav-
"ings Union and the Hibernia bank during the months of Septem-
"ber, October, November, and December, 1895, and has failed to
"produce such testimony, then you are at liberty to infer that any
"explanation in his power to make would have been, if made, ad-
"verse and prejudicial to the defense.

"The law has been stated by the circuit court of appeals for the
"eighth circuit very recently in the case of Gulf, C. & S. *Co.* Rail-
"way *vs.* Ellis, in the 4th United States circuit court of appeals.
"Judge Caldwell, speaking for the circuit court of appeals,
"said:

54 "'Now, it is a well-settled rule of evidence that when the
"circumstances in proof tend to fix a liability on a party
"who has it in his power to offer evidence of all the facts as they
"existed and rebut the inferences which the circumstances in proof
"tend to establish, and he fails to offer such proof, the natural con-
"clusion is that the proof, if produced, instead of rebutting, would
"support the inferences against him, and the jury is justified in
"acting upon that conclusion. "It is certainly a maxim," said
"Lord Mansfield, "that all evidence is to be weighed according to
"the proof, which it was in the power of one side to have produced
"and in the power of the other side to have contradicted."
"'Blatch *v.* Archer, Cowp., 63, 65.

"'It is said by Mr. Starkie, in his work on Evidence, vol. 1, p. 54:
"'The conduct of the party in omitting to produce that evidence
"in elucidation of the subject-matter in dispute which is within his
"power and which rests peculiarly within his own knowledge fre-
"quently affords occasion for presumption against him, since it
"raises strong suspicion that such evidence, if advanced, would
"operate to prejudice.'
"'The same rule is applicable even in criminal cases. Com. *vs.*

" Webster, 5 Cush., 295, 316; People *vs.* McWhorter, 4 Barb., 438.'

" Respecting the contents of the affidavit made by the defendant " and sworn to before Lee D. Craig, a notary public in this city and " county, which has been read in evidence, I instruct you that the " prosecution is not bound by all the statements in said affidavit. " It is the duty of the jury to ascertain from said affidavit and " from the other testimony in the case what portion or por-
55 " tions of the same are true. The jury is then at liberty to " believe one part of it and to disbelieve the other part.

" Such affidavit was introduced upon the theory that it consti- " tuted an admission on the part of the defendant as to his owner- " ship of certain funds referred to therein. The defense then " insisted, as they had a right to, that the entire affidavit should be " read. The whole of it is now before you, and it is for you to de- " termine, from all the circumstances of this case, the situation of " the defendant and all of the evidence that has been introduced " as to what portion of said affidavit, if any, is true. You are at " liberty to believe or reject such portions of it as you think may " be worthy of belief or disbelief.

" In this respect I call your attention to the deposits as they were " made. The first deposit in the San Francisco Savings Union was " made on October 29, 1895, amounting to $350. On November 18, " 1895, there was a deposit of $400, and on December 17, 1895, there " was a deposit of $550, making a total of $1,300.

" Then there was a deposit made with the Hibernia Savings & " Loan Society on September 10, 1895, $300; on September 24th, " $150; October 8th, $800; October 23rd, $500; November 12th, " $700; December 2d, $1,000, making a total of $3,450, and adding " the amount deposited in the San Francisco Savings Union of " $1,300, it makes a total in three months and seventeen days of " $4,750.

" Those deposits were made, as you will observe, at different times. " In September he appears to have deposited the sum of $450. In " October he deposited $1,650. In November he deposited $1,100, " and in December, up to the 17th, he deposited $1,550, making
56 " a total, as I said, of $4,750; nine deposits in three months " and seventeen days. Does the defendant's affidavit satis- " factorily explain or account for the receipt of these sums of " money?"

That there is also error in this, to wit, that the said district court erred in rendering judgment and sentence on the verdict and indictment in case No. 3267, being the case where it is charged that plaintiff in error unlawfully took and received from one Wong Sam the sum of one hundred dollars; that there is also error in this, to wit, that the said district court erred in rendering judgment and sentence on the verdict and indictment herein in case No. 3268; that there is also error in this, to wit, that the said district court erred in its judgment and sentence herein; that said court erred in consolidating the indictments in said cases 3267 and 3268; that there is also error in this, to wit, that plaintiff in error was not convicted by due process of law.

Whereas by the law of the land the said judgment ought to have been given for said Richard S. Williams, plaintiff in error, and against The United States, defendant in error; and the said plaintiff in error, the said Richard S. Williams, prays the judgment be reversed, annulled, and altogether held for nothing, and that he be restored to all things which he hath lost by occasion of the said judgment.

GEORGE D. COLLINS,
Attorney for Plaintiff in Error.

(Endorsed:) Filed September 23d, 1896. Southard Hoffman, clerk.

57 *Bond on Writ of Error.*

Know all men by these presents that we, Richard S. Williams, as principal, and Maria Monferran, of the city and county of San Francisco, State of California, and T. C. Medovich, of the same place, as sureties, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23d day of September, 1896.

Whereas lately, at a session of the district court of the United States in and for the northern district of California, in a criminal action pending in said court and entitled "United States *vs.* Richard S. Williams," a final judgment was rendered against the said Richard S. Williams, and the said Richard S. Williams having obtained a writ of error and lodged a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid action, and a citation directed to the said United States, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at the Capitol, in the city of Washington, on the 23d day of November, 1896:

Now, the condition of the above obligation is such that if the said Richard S. Williams shall prosecute said writ of error to effect and answer all costs and damages if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

58 In witness whereof we have hereunto set our hands and seals this 23d day of September, 1896.

RICHARD S. WILLIAMS. [SEAL.]
MARIA MANFERRAN. [SEAL.]
T. C. MEDOVICH. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEORGE D. COLLINS.

Approved by—
WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

(Endorsed:) Filed September 23d, 1896. Southard Hoffman, clerk.

59 In the District Court of the United States in and for the Northern District of California.

UNITED STATES OF AMERICA
vs.
RICHARD S. WILLIAMS. } Nos. 3267, 3268, Consolidated.

Bill of Exceptions.

Be it remembered that the above-entitled action came regularly on for trial before the said court and a jury regularly empanelled to try the same. The United States district attorney and Barclay Henley represented the prosecution and Messrs. Lyman Mowry and T. C. Coogan represented the defendant; whereupon the respective parties introduced evidence, oral and documentary, and after argument of counsel the court delivered its charge to the jury, and the said action was thereupon submitted to the jury, and after deliberating the jury returned a verdict against said defendant, finding him guilty as charged in the indictments herein; that to said verdict the defendant then and there duly excepted.

I.

1. That defendant interposed his demurrers to the indictments herein, and after argument thereon the court overruled the said demurrers; to each of which rulings said defendants then and there duly excepted.

II.

That during the trial of said consolidated actions the following objections were made by the defendant and the following
60 exceptions reserved, viz:

1. GEORGE W. LEE was called as a witness for the prosecution, and, being duly sworn, testified: I am a deputy county clerk of the city and county of San Francisco and have with me the affidavit of the defendant, Richard S. Williams, filed in the divorce suit of Isabella M. Williams *vs.* Richard S. Williams, in the superior court in and for the city and county of San Francisco, State of California, being the court where that suit is pending.

The prosecution here offered said affidavit in evidence.

Mr. MOWRY: Objected to as irrelevant, immaterial, and incompetent, and as bringing into this case a collateral issue.

The COURT: I overrule the objection.

Mr. MOWRY: We will take an exception.

Mr. HENLEY: It is only a paragraph that I want. That paragraph is as follows. (Here counsel read that portion of said affidavit included in brackets herein.)

Mr. COOGAN: If it is read at all, the jury is entitled to all of it.
The COURT: Read it all.

The said affidavit was then read in evidence herein by the prosecution and is as follows, viz:

In the Superior Court of the City and County of San Francisco, State of California.

ISABELLA M. WILLIAMS, Plaintiff,
vs.
RICHARD S. WILLIAMS, Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco, } *ss:*

61 Richard S. Williams, being first duly sworn, deposes and says:

I have read the affidavit of plaintiff in reply on her motion for alimony, &c., and in reply thereto I desire to say it is untrue that prior to the time I entered the employment of the United States Government I was without means and had had no money for quite a time before, or that I had to borrow money to pay my living expenses. On the contrary, when I entered the employment of the United States Government, on or about the 28th day of September, 1893, I was worth more money then than I am at the present time, being worth about $5,000.00, and since then having inherited some property; that the $3,000.00 referred to in said affidavit was not acquired by me during the time I was in the employment of the United States Government, as set forth in said affidavit, but is a portion of the $5,000.00 heretofore referred to.

The statement in said affidavit that I have in my possession or had in my possession, in addition to the said sum of $3,000.00 aforesaid, the sum of $5,000.00 instead of $4,000.00 is false and untrue; that to my knowledge plaintiff was not in the habit of carrying said sum of $5,000.00 in the bosom of her dress. (On the contrary, there was on deposit in the Hibernia Savings and Loan Society in her name, belonging to me, the sum of about $4,000, which was a part of the $5,000.00 possessed by me at the time I entered the employment of the United States Government. The $3,000.00 in bank referred to is a portion of said sum so deposited in the name of plaintiff in the Hibernia Savings and Loan Society.)

62 In answer to the statement contained on page 2 of said affidavit, to the effect that plaintiff paid for the piano therein referred — and the bill therefor was made out in her name, I simply desire to annex the bill for said piano to this affidavit, showing the bill to be made out in the name of R. S. Williams.

The property at Nos. 420 and 422 Scott street, mentioned on page 2 of said affidavit, was acquired by my stepfather, Henry Monsferran, now deceased. He was a foreigner, unaccustomed to speaking the English language, and the details of the purchase were made by me, but the money that paid for said property was

solely and exclusively the money of the said Henry Monsferran. The deed to the property was taken in his name.

It is untrue that at the time plaintiff left our residence on the 29th day of April, 1896, she left said sum of $5,000.00 in greenbacks. On the contrary, as above stated, there was no such sum, and the money referred to by her as having been drawn from the Hibernia Savings and Loan Society is $3,000.00, so deposited in the savings bank.

It is untrue, as stated in said affidavit, that I avoided the service of the summons and complaint in this action, or that by reason thereof plaintiff incurred an expenditure of $11.25.

RICHARD S. WILLIAMS.

Subscribed and sworn to before me this 1st day of June, A. D. 1896.

[NOTARIAL SEAL.] LEE D. CRAIG,
Notary Public in and for the City and County of San Francisco, State of California.

Kohler & Chase, dealers in pianos and organs, musical instruments, &c., &c.

SAN FRANCISCO, *Jan.* 23*d*, 1896.

63 Sold to R. S. Williams, 422 Scott St.

98,973, 1 Fisher, stool, and cover $410 00

Paid.

KOHLER & CHASE.

Jan. 23d, 1896.

Said affidavit is endorsed: Filed June 1st, 1896. C. F. Curry, clerk, by Geo. W. Lee, deputy clerk.

It is hereby certified that, independently of said affidavit, there is no evidence before the court relative to the matters therein referred to except the bank books next hereinafter mentioned.

2. The prosecution offered in evidence the book of deposit of moneys in the San Francisco Savings Union, a banking corporation of the State of California, which book and deposits are in the name of Richard S. Williams, the defendant, and also offered in evidence the book of deposit of moneys in the Hibernia Savings and Loan Society, a banking corporation of the State of California, which latter book and deposits are in the name of Isabella M. Williams. The deposits in the San Francisco Savings Union, as evidenced by said first-mentioned book, are as follows: October 29, 1893, $350; November 18, 1895, $400; December 17, 1895, $550, making a total of $1,300. The deposits in the Hibernia Savings and Loan Society, as evidenced by said bank book in the name of Isabella M. Williams, are as follows: September 10, 1895, $300; September 24,

1895, $150; October 8, 1895, $800; October 23, 1895, $700;
64 December 2, 1895, $1,000, making a total of $3,450.

That the defendant thereupon objected to the admission in evidence of the said bank book and deposits therein recited in the said San Francisco Savings Union, upon the ground that the same are irrelevant and immaterial. The court overruled said objection; to which ruling defendant then and there duly excepted.

That defendant objected to the admission in evidence of said bank book of Isabella M. Williams and of the deposits therein recited, upon the ground that the same are irrelevant and immaterial; that the court overruled said objection; to which ruling defendant then and there duly excepted; that said items of said books and said deposits evidenced thereby were then by the prosecution read in evidence herein. It is hereby certified that said bank books and affidavit are the only evidence before the court relative to said deposits, and that there is no evidence before the court indicating the existence of any privity or relation between said defendant and said Isabella M. Williams at the time said deposits were made by her or at any other time except as indicated in said affidavit.

3. JOHN H. WISE was called herein as a witness for the defense, and, being duly sworn, testified that he is the collector of customs for the port of San Francisco. The witness also testified to certain other facts. The question was then asked him, "On your return from Washington, to whom was assigned the investigation of female cases?"

The COURT: What is the purpose of this testimony?

Mr. MOWRY: It has been sworn to by Mr. Tobin that Mr. Williams asked for certain cases to be assigned to him and show
65 the *the* result. We propose to show by Mr. Wise that on his return from Washington — assigned to Williams the investigation of Chinese female cases, and while Mr. Williams was acting in that behalf there were more females sent back to China than ever were sent back before or after.

Mr. HENLEY: We object to that as being irrelevant. No doubt, every Chinese woman who did not pay Williams was sent back.

Mr. MOWRY: We object to Mr. Henley making any such statement as that before the jury.

The COURT: Objection overruled.

Mr. MOWRY: We will take an exception.

4. Mr. J. TOBIN was sworn as a witness on behalf of the prosecution and testified: I am a deputy collector of customs. I know the defendant's reputation for truth, honesty, and integrity in the custom-house.

J. J. TOBIN recalled.

Mr. SCHLESINGER:

Q. You have stated your official position?

A. Yes, sir.

Q. How long have you been a resident of this State?
A. Twenty-five years.
Q. Do you know what the general reputation of Mr. Williams was in this community prior to the 7th of April, 1896?
A. Yes, sir; in the custom-house and among the officials.
Q. Is it good or bad?

Mr. MOWRY: That is not general reputation.
The COURT: The question is the general reputation of the defendant in the community where he lives.
66 Mr. COOGAN: Not among a particular class of people.
Mr. SCHLESINGER: What people generally say about him.
The COURT: Those who know him.

A. His general reputation is bad—that is, in that way.

Mr. COOGAN: I move to strike that out.

The COURT: The question is for you to say whether you know his general reputation.
A. Not outside of the custom-house.

Mr. COOGAN: I move to strike out the answer of the Colonel in which he states the reputation of the defendant, on the ground that the proper foundation has not been laid.
The COURT: The motion is denied.
Mr. COOGAN: We will take an exception.

Mr. HENLEY: What is his reputation?

Mr. COOGAN: We object upon the ground that it is irrelevant and the proper foundation has not been laid.
The COURT: I will overrule the objection.
Mr. COOGAN: We take an exception.

The witness then testified that the defendant's reputation in the custom-house is bad.

5. LING YOW was called as a witness for the defendant, and, being duly sworn, testified to certain material facts in favor of the defense. The following questions were then put to him by the prosecution, viz:

Mr. HENLEY: Do you know a place called San Quentin, in this State?
A. Yes, sir.
Q. Were you ever there?

67 Mr. MOWRY: We object to that question on the ground that that is not a proper question to put to this witness or any other witness. The rule is, you must ask the witness, "Were you ever convicted of a felony?"
Mr. HENLEY: I think it is a proper question.
The COURT: I think it is not a proper question unless it may be that that is the only way you can get the answer.
Mr. HENLEY: That is the point.
The COURT: Try it the other way.

Mr. HENLEY: On June 15th, 1892, were you not convicted of perjury in the superior court of Los Angeles county and sentenced to San Quentin?

The COURT: Answer that question.

A. No, sir.

Mr. HENLEY:

Q. Did you ever live in Los Angeles?
A. Yes, sir.
Q. Were you ever tried for any public offense, the commission of a crime there?
A. Yes, sir.
Q. Were you convicted?
A. No, sir; I was not convicted.
Q. Were you acquit-ed?
A. There was a new trial asked for and I was not tried.
Q. Do you say you never were convicted of perjury in any court in this State?

Mr. COOGAN: I object to the question as irrelevant, incompetent, and immaterial, the proper foundation not being laid, and it is not the best evidence.
The COURT: Objection overruled
Mr. COOGAN: We take an exception.

68 A. No, sir.
Q. What was the verdict of the jury—guilty or not guilty?

Mr. COOGAN: That is a matter of record. We object to the question upon the same ground and call your honor's attention to the fact that there is better evidence.

A. The jury found me guilty and I got a new trial, but I was not tried.
Q. Were you tried the second time?
A. I was not tried the second time.
Q. What crime were you charged with in that indictment at the time you were tried?

(Same objection, ruling, and exception.)

A. They said I told an untruth.
Q. What was the verdict of the jury—guilty or not guilty?

Mr. COOGAN: We object upon the ground that the record is the best evidence.
The COURT: Objection overruled.
Mr. COOGAN: We take an exception.

The witness then answered that the verdict of the jury was "guilty," and that the court subsequently granted him a new trial and he was discharged from custody.

III.

In the case of indictment No. 3267, wherein it is charged that the sum of one hundred dollars was taken from Wong Sam, the defendant maintains that the evidence is that the money was taken from Chin Deock and not from Wong Sam. The testimony is as follows:

WONG SAM, being duly sworn as a witness on behalf of the prosecution, testified: I know a Chinaman named Wong Lin
69 Toy. I think he came to San Francisco on the steamer "Coptic," some time in August, 1895. I had something to do with his landing. His brother, Chin Deock, brought me notice. Four or five days before the arrival of the steamer I talked to Williams, the defendant. I told him, When would this Chinaman, Wong Lin Toy, be landed? He said, "It will be very hard to land him now, because the collector was suspicious of all native-born Chinamen." I told him I was ordered by his brother to engage an attorney to take care of the case. He said, "There is no use getting an attorney; he will never be landed if I report bad to the collector; but if you dismiss the attorney and hand the case over to me I will land him much easier, besides save you money in going to the court and expenses and trouble, etc." Then I told him, "How can it be done?" He said, "You have to spend some money." I asked what the expenses would be. He said about $100.00. I told him I would have to see his brother about it. Then I had a talk over with his brother. On the following evening I told Williams if he can land this Wong Lin Toy we will pay him the amount what he requires.

Q. If he would land this Chinaman, that you would pay him the amount he demanded?

A. Yes, sir. He asked me did I dismiss the attorney. I said I did. Then about two days later Wong Lin Toy was landed. Then he came over to my room and wanted the $100. I sent for Wong Lin Toy's brother to come to my room when Mr. Williams was there, and I told his brother that this gentleman came up and wanted to get the money for landing his brother. He handed me over that $100.00. I tried to pay $90.00 instead of $100, but
70 he refused to take it. Then I handed $100.00 over to Mr. Williams in the presence of Wong Lin Toy's brother, in my room.

Q. Did you know at this time what Williams' official position was?

A. Yes, sir; he was inspector and interpreter of the custom-house. I have stated all that passed between Williams and myself, except he told me if I had any more cases to let him know first instead of getting a lawyer.

Cross-examination:

On cross-examination the witness testified: The first day of the conversation, when he asked $100.00, I told him I would see his brother, and he said he would call the next evening. Then I gave

him a straight answer—that when he was landed the money would be paid. He said, "Even if you get an attorney and I report back to the collector that you cannot land him, and you will have to go to court and spend money and have expenses and trouble. Give the case to me and dismiss the attorney and I will land him for $100." I told him it was a straight case, and I would give an answer the next day, after I would see his brother. Afterwards, at the next conversation, I told him Chin Deock was satisfied to pay him $100.00 if his brother was landed.

Q. In regard to the Wong Lin Toy case, that was all that you said—that his brother was willing to pay him $100.00?

A. If he was landed he could come up to my room and get the money. The next and last conversation about Wong Lin Toy was when he was landed, on the same evening, about September 16, 1895. He then first told me that Wong Lin Toy was landed.

71 I said, "Yes; it is all right now." Then he asked me for the money. Then I opened the door and told an outside boy to go and find Chin Deock. Chin Deock then came.

Q. What was said by you to Williams, or Chin Deock to Williams, or Williams to you, or Williams to Chin Deock, about this case of Wong Lin Toy?

A. When Chin Deock came back I said, "This man has come up for the money for landing your brother. Have you the money prepared?" He said, Yes. I said, "Give it to me." He handed over the money to me and I handed it over to Williams.

Q. Chin Deock handed the money to you and you handed it to Williams?

A. Yes, sir.

Q. How much money?

A. He handed me $100.00. I tried to pay Williams $90.00. He refused to take it and I gave him the full.

Q. You thought you would take $10.00 as a sort of commission for your part of the business?

A. We were talking together. I tried to save all the money I could for that friend's sake. After the money was paid, Williams went away.

CHIN DEOCK was sworn as a witness on behalf of the prosecution and testified: Wong Lin Choy's father sent me a letter to attend to the landing of the former. On receipt of the letter I came here and went to Wong Sam's room and talked with him about the matter. I saw Williams prior to the time of the landing of my brother, Wong Lin Choy, in Wong Sam's room.

Q. Was that before your brother was landed or after?

72 A. Before he was landed. Williams said, "Don't get an attorney in that case. If you hire an attorney you will go to court, and it will cost considerable money." Then I said, "Then what would you do?" He said, "You give me a hundred dollars; for a hundred dollars I can have him landed." I said, "Well, that is all right; if you have my younger brother landed, won't I pay

you a hundred dollars?" Then the latter end of the month he was landed. It was a few days after this conversation.

Q. Did you pay any money for it?

A. After he was landed I went up to Wong Sam's room at night, about seven o'clock, and met Williams and Wong Sam there. He said, "Your younger brother has been landed and Williams wants the money." So I said, "Well, I will pay it," and I took the money from my person. I held a hundred dollars, and I said, "I am poor now; ask him is he willing to take $90." He was not willing. As he was not willing, I paid him the full hundred dollars. When I paid the money I put it into Wong Sam's hands, and Wong Sam handed it to him. This occurred in Wong Sam's room. When I went in I sat down on a chair. There were only we three inside. The money was paid in gold.

Cross-examination:

On cross-examination the witness testified: The first time I spoke to Williams was when Wong Lin Choy came here. When I went to Wong Sam's room to pay the money Wong Sam and Williams were there. Wong Sam said, "Your brother has been landed and Williams wants the money." I said then, "If he has been landed, won't I pay the money? I am poor now. Offer him $90
73 and see if he is willing to take it." Williams was not willing to take it, so I paid the amount in full. The money was put in Wong Sam's hands, and he handed it to him. Then he took the money and said, "I have some business," and went away.

Q. What did you put the money in Wong Sam's hands for; why did you not hand it over yourself?

A. Well, Wong Sam told me to.

Q. What did he tell you to do?

A. He said, "Give me the money to give to him."

Q. Why did you not hand the money directly to Williams instead of handing the money directly to Wong Sam and doing it in this roundabout way?

A. I had got Wong Sam to attend to the matter.

Q. It was necessary to use his hand to pass the money from you to Mr. Williams?

A. Yes, sir.

That to the verdict finding defendant guilty on said indictment 3267 defendant at the time of its rendition duly excepted; that to the judgment sentencing him on said verdict just mentioned and on said indictment 3267 defendant at the time of said judgment duly excepted thereto.

IV.

The court instructed the jury as follows in respect to the matters in the following instructions referred to: "There has been some "testimony in support of the allegations of these indictments respect- "ing the pecuniary condition of the defendant, and also testimony "as to the extent of his compensation by the Government for serv-

"ices. This evidence was admitted in compliance with a well-
"known rule which establishes the relevance of evidence of
74 "this character where the charge is such as that alleged in
"these indictments.

"If the salary of the defendant, during the time alleged in the "indictments and before then, was four or five dollars per day, and "if the testimony shows to your satisfaction that he has deposited "in bank or there was deposited to his credit in bank in the neigh-"borhood of $4,750 from September 10th to December 17th, 1895, "alleged in the indictments, then such testimony may be consid-"ered by you with a view of ascertaining how or by what means "the defendant obtained that amount of money at a time when his "compensation by the Government, as is claimed by the prosecu-"tion, was not to exceed about $150.00 per month.

"Where did he get such large sums of money? From what "source other than the source named in the indictments did he "acquire this money? Has he furnished evidence explaining to "your satisfaction the possession of these sums of money?

"These are all questions which you will consider, and if any ex-"planation made by the defendant as to how he came by this money "seems incredible, irrational, and unsatisfactory you are at liberty "to reject it and to act upon the other testimony in the case. If, "after doing all this, you feel to a moral certainty and beyond a "reasonable doubt that he took the money as alleged in the in-"dictments, then your verdict should be guilty.

"In reference to the testimony which has been introduced in "the case showing the pecuniary condition of the defendant, that "if testimony explaining how, when, and by what means the de-"fendant acquired possession of the sums of money shown to have
"been deposited in the San Francisco Savings Union and
75 "Hibernia bank could have been offered by defendant, and
"he failed to produce such testimony, then such failure may "very properly be taken into consideration by the jury in deter-"mining the defendant's guilt or innocence.

"Where probable proof is brought of a state of facts tending to "criminate the accused, the absence of evidence tending to a con-"trary conclusion may be considered, although this attitude of the "case alone would not be entitled to much weight, because the "burden of proof lies on the prosecution to make out the whole "case by sufficient evidence; but when proof of inculpating circum-"stances had been produced tending to support the charge, and it "is apparent that the accused is so situated that he could offer "evidence of all the facts and circumstances as they existed, and to "show, if such was the truth, that the suspicious circumstances can "be accounted for consistently with his innocence, and he fails to offer "such proof, the natural conclusion is that the proof, if produced, "instead of rebutting, would tend to sustain the charges.

"Therefore, if in this case the defendant could have produced "testimony explaining his several deposits in the San Francisco "Savings Union and the Hibernia bank during the months of "September, October, November, and December, 1895, and has

"failed to produce such testimony, then you are at liberty to infer "that any explanation in his power to make would have been, "if made, adverse and prejudicial to the defense.

"The law has been stated by the circuit court of appeals for "the eighth circuit very recently in the case of Gulf, C. & S. "*Co.* Railway *vs.* Ellis, in the 4th United States circuit court of "appeals. Judge Caldwell, speaking for the circuit court of

"appeals, said:

76 "'Now, it is a well-settled rule of evidence that when the "circumstances in proof tend to fix a liability on a party "who has it in his power to offer evidence of all the facts as they "existed and rebut the inferences which the circumstances in proof "tend to establish, and he fails to offer such proof, the natural "conclusion is that the proof, if produced, instead of rebutting, "would support the inference against him, and the jury is justified "in acting upon that conclusion. "It is certainly a maxim," said "Lord Mansfield, "that all evidence is to be weighed according to "the proof which it was in the power of one side to have produced "and in the power of the other side to have contradicted."

"'Blach *v.* Archer, Cowp., 63, 65.

"'It is said by Mr. Starkie in his work on Evidence, vol. 1, p. 54:

"'The conduct of the party in omitting to produce that evidence "in elucidation of the subject-matter in dispute which is within "his power and which rests peculiarly within his own knowledge "frequently affords occasion for presumption against him, since it "raises strong suspicion that such evidence, if adduced, would "operate to his prejudice.'

"'The same rule is applicable even in criminal cases. Com. *vs.* "Webster, 5 Cush., 295, 316; People *vs.* McWhorter, 4 Barb., 438.'

"Respecting the contents of the affidavit made by the defendant "and sworn to before Lee D. Craig, a notary public in this city and "county, which has been read in evidence, I instruct you that the "prosecution is not bound by all the statements in said affidavit.

"It is the duty of the jury to ascertain from said affidavit

77 "and from the other testimony in the case what portion of

"the same are true. The jury is then at liberty to believe "one part of it and to disbelieve the other part.

"Such affidavit was introduced upon the theory that it consti- "tuted an admission on the part of the defendant as to his owner- "ship of certain funds referred to therein. The defense then in- "sisted, as they had a right to, that the entire affidavit should be "read. The whole of it is now before you, and it is for you to de- "termine, from all of the circumstances of this case, the situation of "the defendant, and all of the evidence that has been introduced, "as to what portion of said affidavit, if any, is true. You are at "liberty to believe or reject such portions of it as you think may be "worthy of belief or disbelief.

"In this respect I call your attention to the deposits as they were "made. The first deposit in the San Francisco Savings Union was "made on October 29, 1895, amounting to $350. On November 18,

"1895, there was a deposit of $400, and on December 17, 1895, there "was a deposit of $550, making a total of $1,300.

"Then there was a deposit made with the Hibernia Savings & "Loan Society on September 10, 1895, $300; on September 24th, "$150; October 8th, $800; October 23d, $500; November 12th, "$700; December 2d, $1,000, making a total of $3,450, and adding "the amount deposited in the San Francisco Savings Union of "$1,300, it makes a total in three months and seventeen days of "$4,750.

"These deposits were made, as you will observe, at different times. "In September he appears to have deposited the sum of $450; in "October he deposited $1,650; in November he deposited $1,100, "and in December, up to the 17th, he deposited $1,550, making a
" total, as I said, of $4,750; nine deposits in three months and
78 "seventeen days. Does the defendant's affidavit satisfac-
"torily explain or account for the receipt of these sums of "money?"

That to each of the foregoing instructions the defendant then and there specifically and specially duly excepted at the time they were given and before the jury retired, and said exceptions and all the other exceptions in this bill mentioned were by the court noted at the time each exception was taken; that in relation to each of said instructions it is certified that there is no evidence that said moneys on deposit as aforesaid in the San Francisco Savings Union and the Hibernia Savings and Loan Society, or any part of said moneys, were the fruit of crime, or that any portion thereof embraced the sum of $185, the money charged in the indictments herein to have been unlawfully taken by defendant, except as shown by the affidavit hereinbefore set forth and the dates of said deposits, and to the extent that it is permissible to infer the fact as is indicated in the foregoing instructions, the defendant having failed to explain the said deposits.

V.

That the court consolidated said indictments in cases 3267 and 3268, and to the order consolidating the same defendant then and there duly excepted.

VI.

That after said verdict defendant was called before said court for sentence, and the district attorney moved the court that sentence be imposed; whereupon, in answer to said motion, the defendant, by his counsel, Mr. George D. Collins, moved said court for a new
trial on each of said indictments 3267 and 3268, and also
79 moved said court in arrest of judgment on the second counts
in said indictments; that thereupon said motions were argued and taken under advisement by the court; that thereafter the court denied said motions for a new trial and granted said motions in arrest of judgment, and to said rulings denying said motions for a new trial the defendant then and there duly excepted.

VII.

That thereupon the court rendered its judgment, sentencing the defendant upon said verdict to three years' imprisonment in the State prison, at San Quentin, and a fine of $5,000.00 in case No. 3267, and to three years' imprisonment in the State prison, in San Quentin, and a fine of $5,000.00 in case No. 3268.

That to said sentence and judgment the defendant then and there duly excepted.

Assignment of Errors.

I.

The court erred in overruling the said demurrers.

II.

The court erred in overruling the defendant's objection to the admission in evidence of the affidavit of defendant filed in the superior court in and for the city and county of San Francisco, in the suit of Isabella M. Williams, plaintiff, *vs.* Richard S. Williams, defendant, and filed therein on the 1st day of June, 1896.

III.

The court erred in overruling the defendant's objection to the admission in evidence of the bank book and deposits recited therein standing in the name of defendant in the said San Francisco Savings Union.

80

IV.

The court erred in overruling the defendant's objection to the admission in evidence of the bank book and deposits recited therein standing in the name of Isabella M. Williams in the said Hibernia Savings and Loan Society.

V.

The court erred in overruling the objection to the remark of the prosecuting attorney, Mr. Henley, that "no doubt, every Chinese woman who did not pay Williams was sent back."

VI.

The court erred in overruling the objection to the admission of the testimony of Jno. J. Tobin relative to the reputation of the defendant in the custom-house.

VII.

The court erred in overruling the objections to the questions put by the prosecution to Ling Yow relative to whether he had been in San Quentin; whether he had been tried in Los Angeles on a criminal charge of perjury, and whether the verdict of the jury in that case was guilty or not guilty.

VIII.

The court erred in each instance in giving to the jury the several instructions hereinabove set forth.

IX.

The court erred in rendering judgment and sentence on the verdict and indictment in case No. 3267.

X.

The court erred in rendering judgment and sentence on the verdict and indictment in case No. 3268.

81 XI.

The court erred in its judgment and sentence herein.

XII.

The court erred in its judgment sentencing the defendant to imprisonment in the State prison, at San Quentin, for three years and a fine of $5,000 in case 3267, and also in a similar sentence in case No. 3268.

XIV.

The defendant was not convicted by due process of law.

XV.

The court erred in making an order consolidating the indictments in said cases 3267 and 3268.

Certificate.

The defendant herein praying that the foregoing bill of exceptions be authenticated and the exceptions therein stated be made matter of record:

Now, therefore, it is hereby certified that the said bill of exceptions is correct; that the same contains all the evidence necessary to explain the exceptions, and said bill is hereby allowed and its accuracy is hereby attested this 22d day of September, 1896.

WM. W. MORROW,
Judge of the District Court of the United States,
Northern District of California.

Ordered that the foregoing bill of exceptions be filed *nunc pro tunc* as of September 22d, 1896.

WM. W. MORROW,
District Judge.

O K.
BARCLAY HENLEY.

(Endorsed:) Filed Oct. 13th, 1896, *nunc pro tunc* as of Sept. 22d, 1896. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

82 UNITED STATES OF AMERICA, *ss:*

The within petition having been fully considered and the record upon said writ of error furnishing sufficient cause, it is ordered that a supersedeas upon the judgments in said petition mentioned be, and the same hereby is, granted: and it is further ordered that, pending the determination of the writs of error issued upon said judgments, the within-named Richard S. Williams be, and he is hereby, admitted to bail in the sum of three thousand dollars upon each of said judgments, the sureties to justify before the clerk of the district court of the United States, northern district of California; and upon furnishing said bail it is ordered that the said Richard S. Williams be released and discharged from imprisonment.

Done at the city of Washington, in the District of Columbia, this 3d day of October, 1896.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

(Endorsed:) Filed Oct. 13th, 1896. Southard Hoffman, clerk.

83 UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

Be it remembered that on this 9th day of October, 1896, before the undersigned, clerk of the district court of the United States for the northern district of California, personally appeared Richard S. Williams, as principal, and John T. Davis, Phillipe Reichart, and Maria Monferran, as sureties, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of three thousand dollars ($3,000), separately to be levied and made out of their respective goods and chattels and lands and tenements, to the use of the United States.

The conditions of the above recognizance is such that whereas an indictment was found by the grand jury of the United States for the northern district of California and filed on the 7th day of April, A. D. 1896, in the district court of the United States for the northern district of California, charging the said Richard S. Williams with feloniously, etc., extorting, etc., and taking of one Chan Ying the sum of eighty-five dollars under color of his office as Chinese inspector of the Department of the Treasury at the port of San Francisco, State of California, in violation of the provisions of section 3169 of the Revised Statutes of the United States, subdivision- 1 and 2, and section 23, act of February 8, 1875, volume 1, 2nd edition, Supplement Revised Statutes of the United States; and whereas the said Richard S. Williams was thereafter brought to trial on said indictment before a jury and said United States district court, was found guilty and sentenced to pay a fine of five thousand dollars, and to be imprisoned in the State prison of the State of California, at San Quentin,
84 for the space and period of three years; and whereas said Williams is now serving out said sentence; and whereas after said conviction said Williams sued out in the Supreme Court

of the United States a writ of error to said district court; and whereas by an order made and entered in said Supreme Court by the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, on the 3rd day of October, 1896, the said Richard S. Williams has been admitted to bail, pending the said determination in said Supreme Court of said writ of error, in the sum of three thousand dollars, the sureties to justify before the said clerk of said district court:

Now, therefore, if the said Richard S. Williams shall personally appear and render himself in judgment, on the final determination in said Supreme Court of the United States of said writ of error, at and before the said district court of the United States aforesaid, or whenever or wherever he may be required to answer said judgment, and all matters and things that may be objected against him, whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said district and said court without leave first obtained, and, if said writ of error shall be dismissed, shall appear and render himself in execution of the judgment herein, then this recognizance shall be void; otherwise to remain in full effect and virtue.

RICHARD S. WILLIAMS. [SEAL.]
J. T. DAVIS. [SEAL.]
PHILIPPE REICHART. [SEAL.]
MARIA MONFERRAN. [SEAL.]

Taken and acknowledged before me this 9th day of October, A. D. 1896.

[SEAL.] SOUTHARD HOFFMAN,
Clerk U. S. District Court, Northern District of California.

85 UNITED STATES OF AMERICA, } ss:
Northern District of California, }

John T. Davis, being duly sworn, *each for himself* deposes and says that he is a householder in said district and is worth the sum of three thousand dollars exclusive of property exempt from execution and over and above all debts and liabilities.

J. T. DAVIS.

Subscribed and sworn to before me this 9th day of October, A. D. 1896.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of the District Court of the U. S.,
Northern District of Cala.

UNITED STATES OF AMERICA, } ss:
Northern District of California, }

Phillippe Reichart and Maria Monferran, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of fifteen hundred dollars exclusive of

property exempt form execution, over and above all debts and liabilities.

PHILIPPE REICHART.
MARIA MONFERRAN.

Subscribed and sworn to before me this 9th day of October, A. D. 1896.

[SEAL.] SOUTHARD HOFFMAN,
Clerk U. S. District Court, Northern District of California.

(Endorsed:) Filed October 9th, 1896. Southard Hoffman, clerk.

86 UNITED STATES OF AMERICA, }
Northern District of California, } ss:

I, Southard Hoffman, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing and hereunto annexed eighty-five pages, numbered from one (1) to eighty-five (85), respectively, are a true copy of the record and of all proceedings in the cause mentioned in the annexed writ of error, and that the same constitute the return to said writ.

Seal of the U. S. District Court, Northern Dist. of California.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, in said district, this 21st day of October, 1896.

SOUTHARD HOFFMAN, *Clerk,*
By J. S. MANLEY, *Deputy Clerk.*

Endorsed on cover: Case No. 16,441. N. California D. C. U. S. Term No., 662. Richard S. Williams, plaintiff in error, *vs.* The United States. Filed November 28th, 1896.

No. 266.

Brief of Collins for P. E.

Filed Oct. 13, 1897.

Supreme Court of the United States

OCTOBER TERM, 1896.

[redacted]

RICHARD S. WILLIAMS,
Plaintiff in Error,

vs.

THE UNITED STATES,
Defendant in Error.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Brief on Behalf of Plaintiff in Error.

GEORGE D. COLLINS,
Counsel for Plaintiff in Error.

Jos. Winterburn Co., Printers, S. F.

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA.

OCTOBER TERM, 1896.

No. 661.

RICHARD S. WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Brief on Behalf of the Plaintiff in Error.

STATEMENT.

Indictment for alleged extortion of one hundred dollars under "color of office." The plaintiff in error was prosecuted, convicted and sentenced pursuant to the provisions of Section 3169 of the Revised Statutes, taken in connection with Section 23 of the Act of February 8th, 1875, entitled "An Act to Amend Existing Customs and Internal Revenue Laws, and for other purposes." (Suppl. Rev. Stat., p. 61). It is charged in the indictment that at the time of the alleged extortion plaintiff in error was "an officer of the Department of Treasury of the said "United States, duly appointed and acting under the "authority of the laws of the said United States, and "being then and there a person designated as Chinese "Inspector at said port of San Francisco, and by virtue

" of his said office being then and there authorized, di-
" rected and required to aid and assist the Collector of
" Customs of said port in the enforcement and carrying
" out of the various laws and regulations of the said
" United States relating to the coming of Chinese persons
" and persons of Chinese descent from foreign ports to the
" United States at said port of San Francisco." It is further charged that under color of said office the money was extorted from one Wong Sam as a condition for landing Wong Lin Choy. There are two counts in the indictment; a motion in arrest of judgment on the second count was sustained. On the first count, the lower court held that plaintiff in error was a *custom's inspector*, and that the authority for his appointment is to be found in section 2606 of the Revised Statutes; on that indefensible theory the court reached the rather extraordinary conclusion that the plaintiff in error is accused and convicted of violating section 3169 of the Revised Statutes, and accordingly sentenced him to imprisonment in the penitentiary at San Quentin for the period of three years and to pay a fine of $5,000.00, with further imprisonment until the fine be paid. There are two Indictments of two counts each, and for distinct and independent offenses; the court ordered the Indictments consolidated and a conviction resulted on both. The judgment was on motion of plaintiff in error, arrested on the second counts of *each* Indictment.

The errors relied upon for reversal of the judgment, arise upon the judgment roll and a Bill of Exceptions. The questions presented relate to the sufficiency of the Indictment, the nature and character of the offense charged, error in consolidating the Indictments, errors in ruling admissible certain testimony and in overruling objections thereto, error in overruling an objection to certain improper statements made by the Special Attorney for the Government, and tending to prejudice the jury against the defendant, insufficiency of the evidence to sustain the verdict and judgment, errors in giving certain instructions to the jury, and error in sentencing the defendant to the penitentiary.

ERRORS ASSIGNED.

The following constitute the errors relied upon in support of the prayer for a reversal of the judgment, viz.:

I.

The Indictment is not sustained by Section 3169 of the Revised Statutes; nor does Section 23 of the Act of February 8th, 1875, apply to the case. The court erred in overruling the demurrer.

II.

The court erred in ordering the consolidation of the Indictments.

III.

The court erred in overruling the objection to and in admitting in evidence, the affidavit of defendant made by him in the case of *Isabella M. Williams* vs. *Richard S. Williams*, pending in the Superior Court in and for the City and County of San Francisco, State of California, and filed therein June 1st, 1896. The affidavit is as follows:

"STATE OF CALIFORNIA, } ss.
" *City and County of San Francisco,* }

" Richard S. Williams, being first duly sworn, deposes " and says:

" I have read the affidavit of plaintiff in reply on her " motion for alimony, etc., and in reply thereto I desire " to say it is untrue that prior to the time I entered the em- " ployment of the United States Government I was with- " out means and had had no money for quite a time before, " or that I had to borrow money to pay my living expenses. " On the contrary, when I entered the employment of the " United States Government, on or about the 28th day of " September, 1893, I was worth more money then than I " am at the present time, being worth about $5,000.00, " and since then having inherited some property: that the " $3,000.00 referred to in said affidavit was not acquired " by me during the time I was in the employment of the " United States Government, as set forth in said affidavit " but is a portion of the $5,000.00 heretofore referred to

" The statement in said affidavit that I have in my " possession or had in my possession, in addition to the " said sum of $3,000.00 aforesaid, the sum of $5,000.00 " instead of $4,000.00 is false and untrue; that to my " knowledge the plaintiff was not in the habit of carrying " said sum of $5,000.00 in the bosom of her dress. (On " the contrary, there was on deposit in the Hibernia Sav- " ings and Loan Society in her name, belonging to me, the " sum of about $4,000.00, which was a part of the $5,000.00 " possessed by me at the time I entered the employment " of the United States Government. The $3,000.00 in " bank referred to is a portion of said sum so deposited in " the name of plaintiff in the Hibernia Savings and Loan " Society.)

" In answer to the statement contained on page 2 of " said affidavit, to the effect that plaintiff paid for the " piano therein referred to and the bill therefor was made " out in her name, I simply desire to annex the bill for " said piano to this affidavit, showing the bill to be made " out in the name of R. S. Williams.

" The property at Nos. 420 and 422 Scott street, men- " tioned on page 2 of said affidavit, was acquired by my " stepfather, Henry Monsferran, now deceased. He was " a foreigner, unaccustomed to speaking the English " language, and the details of the purchase were made by " me, but the money that paid for said property was sole- " ly and exclusively the money of the said Henry Mons- " ferran. The deed to the property was taken in his " name.

" It is untrue that at the time plaintiff left our residence " on the 29th day of April, 1896, she left said sum of " $5,000.00 in greenbacks. On the contrary, as above " stated, there was no such sum, and the money referred " to by her as having been drawn from the Hibernia " Savings and Loan Society is $3,000.00, so deposited in " the savings bank.

" It is untrue, as stated in said affidavit, that I avoid- " ed the service of the summons and complaint in this

" action, or that by reason thereof plaintiff incurred an " expenditure of $11.25.

" RICHARD S. WILLIAMS.

" Subscribed and sworn to before me this 1st day of " June, A. D. 1896.

" [NOTARIAL SEAL.] LEE D. CRAIG,

" *Notary Public in and for the City and County*

" *of San Francisco, State of California.*

" Said affidavit is endorsed: Filed June 1st, 1896. C. " F. Curry, clerk, by Geo. W. Lee, deputy clerk."

IV.

The court erred in overruling the objection to and in admitting in evidence the book of deposit of moneys in the San Francisco Savings Union, a banking corporation of the State of California, which book and deposits are in the name of Richard S. Williams, the defendant, said book showing entries of the following sums deposited on the following dates, viz.: October 29th, 1893, $350; November 18th, 1895, $400; December 17th, 1895, $550, making a total of $1,300.

V.

The court erred in overruling the objection to and in admitting in evidence the book of deposit of moneys in the Hibernia Savings and Loan Society, a banking corporation of the State of California, which book and deposits are in the name of Isabella M. Williams, said book showing entries of the following sums deposited on the following dates, viz.: September 10th, 1895, $300; September 24th, 1895, $150; October 8th, 1895, $800; October 23rd, 1895, $500; November 12th, 1895, $700; December 2nd, 1895, $1,000, making a total of $3,450.

VI.

The court erred in overruling the objection to and in admitting in evidence the testimony of J. J. Tobin relative to the "general reputation" of defendant in the custom house.

VII.

The Court erred in overruling the objection to, and in admitting in evidence, the testimony of Ling Yow, relative to whether he was convicted of perjury, and whether the verdict of the jury was guilty or not guilty, and as to what crime he was charged with in the Indictment, at the time he was tried.

VIII.

The Court erred in overruling the objection to the statement of the Special Attorney for the Government, that "no doubt every Chinese woman who did not pay "Williams was sent back." Said statement was made during the trial, and while the witness John H. Wise was giving his testimony, and tended to prejudice the jury against the defendant.

IX.

The Court erred in giving the following instruction to the jury, viz:

"There has been some testimony in support of the alle-
"gations of these indictments respecting the pecuniary
"condition of the defendant, and also testimony as to the
"extent of his compensation by the Government for ser-
"vices. This evidence was admitted in compliance with
"a well-known rule which establishes the relevance of
"evidence of this character where the charge is such as
"that alleged in these indictments.

"If the salary of the defendant, during the time alleged
"in the indictments and before then, was four or five
"dollars per day, and if the testimony shows to your
"satisfaction that he has deposited in bank or there was
"deposited to his credit in bank in the neighborhood of
"$4,750.00 from September 10th to December 17th, 1895,
"alleged in the indictments, then such testimony may be
"considered by you with a view of ascertaining how or by
"what means the defendant obtained that amount of
"money at a time when his compensation by the Govern-
"ment, as is claimed by the prosecution, was not to exceed
"about $150.00 per month.

" Where did he get such large sums of money ? From " what source other than the source named in the indict- " ments did he acquire this money ? Has he furnished " evidence explaining to your satisfaction the possession " of these sums of money ?

" These are all questions which you will consider, and " if any explanation made by the defendant as to how he " came by this money seems incredible, irrational, and " unsatisfactory you are at liberty to reject it and to act " upon the other testimony in the case. If, after doing " all this, you feel to a moral certainty and beyond a " reasonable doubt that he took the money as alleged in " the indictments, then your verdict should be guilty.

" In reference to the testimony which has been intro- " duced in the case showing the pecuniary condition of " the defendant, that if testimony explaining how, when, " and by what means the defendant acquired possession of " the sums of money shown to have been deposited in the " San Francisco Savings Union and Hibernia Bank could " have been offered by defendant, and he failed to produce " such testimony, then such failure may very properly be " taken into consideration by the jury in determining the " defendant's guilt or innocence.

" Where probable proof is brought of a state of facts " tending to criminate the accused, the absence of evidence " tending to contrary conclusion may be considered, al- " though this attitude of the case alone would not be en- " titled to much weight, because the burden of proof lies on " the prosecution to make out the whole case by sufficient " evidence; but when proof of inculpating circumstances " has been produced tending to support the charge, " and it is apparent that the accused is so situated that " he could offer evidence of all the facts and circumstances " as they existed, and to show, if such was the truth, that " the suspicious circumstances can be accounted for con- " sistently with his innocence, and he fails to offer such " proof, the natural conclusion is that the proof, if pro- " duced, instead of rebutting, would tend to sustain the " charges.

" Therefore, if in this case the defendant could have " produced testimony explaining his several deposits in " the San Francisco Savings Union and the Hibernia Bank " during the months of September, October, November, " and December, 1895, and has failed to produce such " testimony, then you are at liberty to infer that any ex- " planation in his power to make would have been, if " made, adverse and prejudicial to the defense.

" The law has been stated by the circuit court of ap- " peals for the eighth circuit very recently in the case of " Gulf, C. & S. *Co.* Railway *vs.* Ellis, in the 4th United " States circuit court of appeals. Judge Caldwell, speak- " ing for the circuit court of appeals, said:

" 'Now, it is a well-settled rule of evidence that when " the circumstances of proof tend to fix a liability on a " party who has it in his power to offer evidence of all the " facts as they existed and rebut the inferences which the " circumstances in proof tend to establish, and he fails to " offer such proof, the natural conclusion is that the proof, " if produced, instead of rebutting, would support the in- " ference against him, and the jury is justified in acting " upon that conclusion. " It is certainly a maxim," said " Lord Mansfield, " that all evidence is to be weighed " according to the proof which it was in the power of one " side to have produced and in the power of the other side " to have contradicted."

" Blach *vs.* Archer, Cowp., 63, 65.

" 'It is said by Mr. Starkie in his work on Evidence, " vol. 1, p. 54:

" 'The conduct of the party in omitting to produce that " evidence in elucidation of the subject matter in dispute " which is within his power and which rests peculiarly " within his own knowledge frequently affords occasion for " presumption against him, since it raises strong suspicion " that such evidence, if adduced, would operate to his " prejudice.'

" 'The same rule is applicable even in criminal cases. " Com. *vs.* Webster, 5 Cush., 295, 316; People *vs.* Mc " Whorter, 4 Barb., 438.' Respecting the contents of the

" affidavit made by the defendant and sworn to before " Lee D. Craig, a notary public in this city and county, " which has been read in evidence, I instruct you that the " prosecution is not bound by all the statements in said " affidavit. It is the duty of the jury to ascertain from " said affidavit and from the other testimony in the case " what portions of the same are true. The jury is then at " liberty to believe one part of it and to disbelieve the " other part.

" Such affidavit was introduced upon the theory that it " constituted an admission on the part of the defendant " as to his ownership of certain funds referred to therein. " The defense then insisted, as they had a right to, that " the entire affidavit should be read. The whole of it is " now before you, and it is for you to determine, from all of " the circumstances of this case, the situation of the de- " fendant, and all of the evidence that has been introduced, " as to what portion of said affidavit, if any, is true. You " are at liberty to believe or reject such portions of it as " you think may be worthy of belief or disbelief.

" In this respect I call your attention to the deposits " as they were made. The first deposit in the San Fran- " cisco Savings Union was made on October 29, 1895, " amounting to $350. On November 18, 1895, there was " a deposit of $400, and on December 17, 1895, there was " a deposit of $550, making a total of $1,3000.

" Then there was a deposit made with Hibernia Savings " and Loan Society on September 10, 1895, $300; on " September 24th, $150; October 8th, $800; October 23d, " $500: November 12th, $700: December 2d, $1,000, mak- " ing a total of $3,450, and adding the amount deposited " in the San Francisco Savings Union of $1,300, it makes " a total in three months and seventeen days of $4,750.

" These deposits were made, as you will observe, at " different times. In September he appears to have de- " posited the sum of $450; in October he deposited $1,650; " in November he deposited $1,100, and in December, up " to the 17th, he deposited $1,550, making a total, as I " said, of $4,750; nine deposits in three months and seven-

" teen days. Does the defendant's affidavit satisfactorily " explain or account for the receipt of these sums of " money ? "

X.

The Court erred in its judgment sentencing defendant to imprisonment in the California State Prison at San Quentin, for three years, and to pay a fine of $5,000.

ARGUMENT.

1. In the Court below, this case was tried and the defendant convicted and sentenced upon the theory that the Indictment charged him with the offense prescribed by sub-division one of Section 3169 of the Revised Statutes, taken in connection with Section 23 of the Revenue Act of February 8, 1875, Supplement Revised Statutes, page 61; the Court holding defendant to be a customs revenue officer and ascribing the authority for his appointment to a revenue law, to wit: Section 2606 of the Revised Statutes. (Transcript, p. 18 *et seq.*) In this, undoubtedly, the Court below committed a most palpable error. The defendant is not charged in the Indictment with being a revenue or customs revenue officer; on the contrary it is explicitly averred that he is an officer of the Department of Treasury designated "Chinese Inspector at the port of San Francisco," and that the duties of his office and his official functions are to "aid and assist the Col- " lector of Customs of said port in the enforcement and " carrying out of the various laws and regulations of the " said United States relating to the coming of Chinese " persons and persons of Chinese descent from foreign " ports to the United States at said port of San Fran- " cisco."

It is manifest then, that assuming for the purpose of this point, that the averment of official character is sufficient, defendant's official position appertains exclusively to the Chinese Exclusion Law. That law is not a revenue measure; nor is it made such by reason of the fact that its enforcement is committed to the Treasury Department; nor by reason of the fact that in some cases the Collector of Internal Revenue is required to enforce certain of its

provisions, while in other cases, the Collector of Customs is charged with the enforcement of other provisions. It is quite common for Congress to impose such duties on the Department of Treasury and the subordinate officers of that Department (*Nishimura Ekiu* vs. *United States, 142 U. S., 659);* but it by no means follows that such laws are revenue measures, and the officers revenue officers. Section 3169 of the Revised Statutes applies only to revenue officers, even under the provisions of Section 23 of the Act of February 8th, 1875. That Act is a *revenue* law and the very language of Section 23 confines its operation to persons "acting under the authority of "any internal revenue or customs law or any revenue "provision of any law of the United States, when such "persons are designated or acting as officers or deputies, "or persons having the custody or disposition of any "public money." The Chinese Exclusion Act is in no sense a customs law, and we must confess our complete inability to discover a semblance of reasoning in the mental process, by means of which the lower court held the defendant to be within the provisions of subdivision one of Section 3169 of the Revised Statutes, and punished him accordingly. The court's conclusion is the more indefensible, in view of the fact that in its opinion on the motion in arrest of judgment (Trans. p. 20) reference is made to the very law under which defendant must have been appointed, if at all. That law is to be found in all the Appropriation Acts, from 1890 to the present, and in the following words, under the title of "Miscellaneous objects under the Treasury Department," viz.: "Enforcement of "Chinese Exclusion Act: To prevent unlawful entry of "Chinese into the United States, by the appointment of "suitable officers to enforce the laws in relation thereto "and for expenses of returning to China all Chinese per- "sons found to be unlawfully in the United States."

26 Statutes at Large, 387, 968.
27 Statutes at Large, 589.
28 Statutes at Large, 41, 390, 637, 846, 932.
29 Statutes at Large, 431.

And yet, notwithstanding the averments of the Indictment, the lower court asserts that defendant's appointment was made under the provisions of Section 2606 of the Revised Statutes, which section is one of a series of sections of the *revenue* law of July 14, 1870, relative to "internal taxes," and in its original and unabridged form provides for the appointment at certain ports of the United States of "such number of weighers, gaugers, " measurers and inspectors as may be necessary to exe- " cute the provisions of this Act." The defendant was not appointed under that law, and if he was, his position and duties as Chinese Inspector for the port of San Francisco, and his alleged extortion of money under color of *that* office, would be entirely and absolutely independent of and foreign to his position of inspector under Section 2606 of the Revised Statutes. It is an entirely different office. He is not charged with extortion under color of his office of revenue inspector—the office provided for in Section 2606.

It follows that the Indictment is fatally defective in being framed upon Section 3169, and that the judgment is for the same reason, not merely voidable, but absolutely void.

The law governing the offense of extortion "under color of office" is *Section 5481 of the Revised Statutes*, and the extreme penalty there prescribed is a fine of not more than $500, *or* imprisonment not more than one year; whereas, under Section 3169, the law by virtue of which defendant was sentenced and received the extreme penalty, the punishment is a fine of not less than $1000 nor more than $5000 *and* imprisonment for not less than six months nor more than three years.

2. Even if the Indictment in a case like this could be framed under subdivision one of Section 3169, it would not be valid unless it clearly and unmistakably brought the case within the language of that law.

United States vs. Brewer, 139 U. S., 288.
Hess vs. United States, 124 U. S., 486.
Bishop on Statutory Crimes, Sec. 380.

The Indictment in this case does not do so. It charges extortion " under color of office "; whereas, the extortion provided for in Subdivision one of Section 3169, must be " under color of law."

3. The Indictment is also fatally defective in this: It avers that the money was extorted under color of office, and then states in detail how it was obtained, and that specific statement of the facts shows that the money was not obtained under color of office, but was obtained by false representations ; such being the case it is not extortion.

Collier vs. State, 55 Ala., 125.

4. The Indictment is also fatally defective in this: It does not sufficiently show that defendant was at the time of the alleged extortion an officer of the United States, either *de facto* or *de jure*. The allegation that he was an officer of the Department of Treasury of the United States does not necessarily indicate that he is an officer of the United States ; nor is such an averment sufficiently specific. The allegation that he was " designated as Chinese inspector at the port of San Francisco " does not supply the defect. There is no such officer known to the law as that of Chinese inspector, and even if there was, to allege as does this Indictment that the defendant was a person *designated as Chinese inspector* at said port of San Francisco, is clearly not the equivalent of an allegation that he was Chinese inspector.

II.

The lower court erred in consolidating the Indictments against the defendant's exception. (Trans. 43.) The Indictments state " substantive offences, separate and dis- " tinct, complete in themselves and independent of each " other, committed at different times and not provable by " the same evidence."

McElroy vs. United States, 164 U. S., 76.

The offences could not have been joined in one Indictment, and therefore the Indictments were erroneously consolidated.

Sec. 1024 Revised Statutes.

III.

The court below fell into flagrant error in admitting in evidence against defendant's objection, his affidavit filed in the Superior Court in and for the City and County of San Francisco, in the case of *Williams* vs. *Williams*. (Trans. p. 32.) The purpose for which the court admitted the testimony is stated in the instruction to the jury (Trans. p. 42) to be that it constituted "an admission on "the part of defendant as to his ownership of certain "funds referred to therein." On that basis the court went on and instructed the jury that the *onus* was on the defendant to show that he acquired those funds innocently. That instruction we will attack presently; but even assuming what is not the fact, that the affidavit had such tendency as the court held it to possess, and that it furnished evidence incriminating in character, its admission was in that case in plain violation of Section 860 of the Revised Statutes. It constituted evidence obtained from a party by means of a judicial proceeding and for that reason was not admissible.

IV.

There is likewise manifest error in admitting the bank books in evidence (Trans. p. 34); especially the bank book of Isabella M. Williams,—a person not shown to be in privity with defendant. These bank books, together with the affidavit, constitute the evidence on which the lower court gave to the jury a certain exceedingly erroneous instruction; in the discussion of that error we can better demonstrate the injury we sustained by the admission in evidence of the affidavit and bank books, and therefore refer to what is hereinafter said upon the subject.

V.

The testimony of J. J. Tobin (Trans. p. 35 *et seq*), introduced and by the court admitted to impeach the credibility of defendant, is another instance of flagrant error. A witness cannot be impeached by evidence of his reputation for truth, honesty and integrity, *in the custom house*, and the defendant's objection should have been sustained.

VI.

Ling Yow was one of the witnesses for the defendant, and after giving material testimony in support of defendant's case (Trans. p. 36), he was asked as to whether he was ever convicted of perjury, what offense he was charged with in the Indictment, and whether the verdict was guilty or not guilty. Objection was made to each of those questions as being irrelevant, incompetent, and that the proper foundation had not been laid and that the record was the best evidence. The objections were overruled and exceptions reserved. The rulings were clearly erroneous.

People vs. Reinhart, 39 Cal., 449.
1 Greenleaf on Evidence, Sec. 457.
People vs. Hamblin, 68 Cal., 103.
People vs. Crapo, 76 N. Y., 293.

VII.

The action of the lower court in overruling the objection made to the statement of Mr. Henley, special counsel for the prosecution, (Trans. p. 35) is gross error. When he stated in the hearing of the jury that "no doubt every "Chinese woman who did not pay Williams was sent "back" to China, it was the duty of the court to rebuke counsel for making such an improper remark; but instead of a rebuke, the court gave emphasis to and corroborative of the statement by overruling defendant's objection to it. Such action on the part of the court constitutes reversible error.

Graves vs. United States, 150 U. S., 120.

VIII.

The court in instructing the jury (Trans. p. 41), adverted to the affidavit of defendant in the case of *Williams* vs. *Williams*, and to the various deposits shown by the bank books and aggregating $4,750, and told the jury that they might consider those deposits in connection with the other fact that the defendant received from the Government a salary not to exceed about $150 per month, and that they were to ascertain how or by what means the defendant obtained the $4,750. "Where did he get such large sums of money? "from what source other than the source named in the

" Indictments did he acquire this money ? Has he fur-
" nished evidence explaining to your satisfaction the
" possession of these sums of money ?" * * * *
" Therefore if in this case the defendant could have pro-
" duced testimony explaining his several deposits in the
" San Francisco Savings Union and the Hibernia Bank
" during the months of September, October, November,
" and December, 1895, and has failed to produce such
" testimony, then you are at liberty to infer that any ex-
" planation in his power to make would have been if
" made, adverse and prejudicial to the defense." These are portions of the instructions given; there is more of a like character. That the District Judge did not understand the law, is apparent. In the first place he was wrong in referring to the deposit in the Hibernia Bank as the *defendant's* deposit; there is no evidence to that effect in the case, and the transcript of the record at page 35, virtually so declares. In the next place the combined Indictments charged an extortion of but $185, and yet the instruction called upon the defendant to explain deposits made before and after the alleged commission of the offenses, and aggregating $4,750. In the next place, as the transcript affirmatively shows at page 43, there was no evidence that any part of said sum of $4,750 constituted the "fruit of crime" (*3 Greenleaf on Evidence, Sec. 31*), nor that any portion of that sum embraced the $185, "the money " charged in the Indictments herein to have been unlaw-
" fully taken by defendant." In short, there was nothing *suspicious* in character in the fact that the deposits had been made; and it is only where there exists suspicious and inculpatory circumstances relative to the acquisition of the money that the rule referred to by the lower court has any application. The presumption of innocence protected the defendant from every adverse inference that the lower court told the jury they could draw from the unexplained possession by defendant of the money on deposit in his name. It was not shown to be the fruit of crime; it was not shown to be suspicious or inculpatory, and therefore no explanation from defendant was neces-

sary. It is to be noted that the record affirmatively shows that the bank books and the affidavit are the only evidence before the court relative to said deposits. (Trans. p. 35.) The true rule is stated in *Graves* vs. *United States, 150 U. S., 120*, and it is quite clear that the District Judge did not correctly understand the rule nor the authorities he cited. His instruction violates the law as declared in

Chaffee vs. United States, 18 Wall., 516, 545.
Doty vs. State, 7 Blackf., 427.

IX.

The evidence is manifestly insufficient to sustain the verdict and judgment. The Indictment charges the defendant with extorting one hundred dollars from *Wong Sam*. The evidence is that the extortion, if any, was from *Chin Deock* and not Wong Sam. See Transcript, page 37, *et seq*. The point is not merely one of variance; it presents a case where there is a complete failure of proof.

Commonwealth vs. Bagley, 7 Pick., 279.

X.

The judgment is undoubtedly void. It is based upon Section 3,169 of the Revised Statutes, and we have pointed out that the case is not within the provisions of that section. The penalty for extortion under "color of office" is prescribed by Section 5,481, and is limited to one year or a fine of $500. The judgment is also void because by its terms the defendant is sentenced for extorting $85 "under color of his office as Chinese inspector of the Department of Treasury at the port of San Francisco." (Trans. 17). There is no such office known to the law. The judgment is likewise void for the reason that the Indictment is insufficient to sustain it—a point hereinbefore fully discussed.

We respectfully submit that the judgment ought to be *reversed*.

GEORGE D. COLLINS,
Counsel for Plaintiff in Error.

No. 264.

Brief of Collins for P. E.

Filed Oct. 13, 1897.

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 662. 267

RICHARD S. WILLIAMS,
Plaintiff in Error,

vs.

THE UNITED STATES,
Defendant in Error.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Brief on Behalf of Plaintiff in Error.

GEORGE D. COLLINS,
Counsel for Plaintiff in Error.

Jos. Winterburn Co., Printers, S. F.

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA.

OCTOBER TERM, 1896.

No. 662.

RICHARD S. WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Brief on Behalf of the Plaintiff in Error.

STATEMENT.

Indictment for alleged extortion of eighty-five dollars under "color of office." The plaintiff in error was prosecuted, convicted and sentenced pursuant to the provisions of Section 3169 of the Revised Statutes, taken in connection with Section 23 of the Act of February 8th, 1875, entitled "An Act to Amend Existing Customs and Internal Revenue Laws, and for other purposes." (Suppl. Rev. Stat., p. 61). It is charged in the indictment that at the time of the alleged extortion plaintiff in error was "an officer of the Department of Treasury of the said "United States, duly appointed and acting under the "authority of the laws of the said United States, and "being then and there a person designated as Chinese "Inspector at said port of San Francisco, and by virtue

" of his said office being then and there authorized, di-
" rected and required to aid and assist the Collector of
" Customs of said port in the enforcement and carrying
" out of the various laws and regulations of the said
" United States relating to the coming of Chinese persons
" and persons of Chinese descent from foreign ports to the
" United States at said port of San Francisco." It is further charged that under color of said office the money was extorted from one Chan Ying as a condition for landing Chin Shee Hung. There are two counts in the indictment; a motion in arrest of judgment on the second count was sustained. On the first count, the lower court held that plaintiff in error was a *custom's inspector*, and that the authority for his appointment is to be found in section 2606 of the Revised Statutes; on that indefensible theory the court reached the rather extraordinary conclusion that the plaintiff in error is accused and convicted of violating section 3169 of the Revised Statutes, and accordingly sentenced him to imprisonment in the penitentiary at San Quentin for the period of three years and to pay a fine of $5,000.00, with further imprisonment until the fine be paid. There are two Indictments of two counts each, and for distinct and independent offenses; the court ordered the Indictments consolidated and a conviction resulted on both. The judgment was on motion of plaintiff in error, arrested on the second counts of *each* Indictment.

The errors relied upon for reversal of the judgment, arise upon the judgment roll and a Bill of Exceptions. The questions presented relate to the sufficiency of the Indictment, the nature and character of the offense charged, error in consolidating the Indictments, errors in ruling admissible certain testimony and in overruling objections thereto, error in overruling an objection to certain improper statements made by the Special Attorney for the Government, and tending to prejudice the jury against the defendant, errors in giving certain instructions to the jury, and error in sentencing the defendant to the penitentiary.

ERRORS ASSIGNED.

The following constitute the errors relied upon in support of the prayer for a reversal of the judgment, viz.:

I.

The Indictment is not sustained by Section 3169 of the Revised Statutes; nor does Section 23 of the Act of February 8th, 1875, apply to the case. The court erred in overruling the demurrer.

II.

The court erred in ordering the consolidation of the Indictments.

III.

The court erred in overruling the objection to and in admitting in evidence, the affidavit of defendant made by him in the case of *Isabella M. Williams* vs. *Richard S. Williams*, pending in the Superior Court in and for the City and County of San Francisco, State of California, and filed therein June 1st, 1896. The affidavit is as follows:

"STATE OF CALIFORNIA, } ss.
" *City and County of San Francisco,* }

" Richard S. Williams, being first duly sworn, deposes " and says:

" I have read the affidavit of plaintiff in reply on her " motion for alimony, etc., and in reply thereto I desire " to say it is untrue that prior to the time I entered the em- " ployment of the United States Government I was with- " out means and had had no money for quite a time before, " or that I had to borrow money to pay my living expenses. " On the contrary, when I entered the employment of the " United States Government, on or about the 28th day of " September, 1893, I was worth more money then than I " am at the present time, being worth about $5,000.00, " and since then having inherited some property: that the " $3,000.00 referred to in said affidavit was not acquired " by me during the time I was in the employment of the " United States Government, as set forth in said affidavit, " but is a portion of the $5,000.00 heretofore referred to

"The statement in said affidavit that I have in my "possession or had in my possession, in addition to the "said sum of $3,000.00 aforesaid, the sum of $5,000.00 "instead of $4,000.00 is false and untrue; that to my "knowledge the plaintiff was not in the habit of carrying "said sum of $5,000.00 in the bosom of her dress. (On "the contrary, there was on deposit in the Hibernia Sav- "ings and Loan Society in her name, belonging to me, the "sum of about $4,000.00, which was a part of the $5,000.00 "possessed by me at the time I entered the employment "of the United States Government. The $3,000.00 in "bank referred to is a portion of said sum so deposited in "the name of plaintiff in the Hibernia Savings and Loan "Society.)

"In answer to the statement contained on page 2 of "said affidavit, to the effect that plaintiff paid for the "piano therein referred to and the bill therefor was made "out in her name, I simply desire to annex the bill for "said piano to this affidavit, showing the bill to be made "out in the name of R. S. Williams.

"The property at Nos. 420 and 422 Scott street, men- "tioned on page 2 of said affidavit, was acquired by my "stepfather, Henry Monsferran, now deceased. He was "a foreigner, unaccustomed to speaking the English "language, and the details of the purchase were made by "me, but the money that paid for said property was sole- "ly and exclusively the money of the said Henry Mons- "ferran. The deed to the property was taken in his "name.

"It is untrue that at the time plaintiff left our residence "on the 29th day of April, 1896, she left said sum of "$5,000.00 in greenbacks. On the contrary, as above "stated, there was no such sum, and the money referred "to by her as having been drawn from the Hibernia "Savings and Loan Society is $3,000.00, so deposited in "the savings bank.

"It is untrue, as stated in said affidavit, that I avoid- "ed the service of the summons and complaint in this

" action, or that by reason thereof plaintiff incurred an " expenditure of $11.25.

" RICHARD S. WILLIAMS.

" Subscribed and sworn to before me this 1st day of " June, A. D. 1896.

" [NOTARIAL SEAL.] LEE D. CRAIG,

" *Notary Public in and for the City and County*

" *of San Francisco, State of California.*

" Said affidavit is endorsed: Filed June 1st, 1896. C. " F. Curry, clerk, by Geo. W. Lee, deputy clerk."

IV.

The court erred in overruling the objection to and in admitting in evidence the book of deposit of moneys in the San Francisco Savings Union, a banking corporation of the State of California, which book and deposits are in the name of Richard S. Williams, the defendant, said book showing entries of the following sums deposited on the following dates, viz.: October 29th, 1893, $350; November 18th, 1895, $400; December 17th, 1895, $550, making a total of $1,300.

V.

The court erred in overruling the objection to and in admitting in evidence the book of deposit of moneys in the Hibernia Savings and Loan Society, a banking corporation of the State of California, which book and deposits are in the name of Isabella M. Williams, said book showing entries of the following sums deposited on the following dates, viz.: September 10th, 1895, $300; September 24th, 1895, $150; October 8th, 1895, $800; October 23rd, 1895, $500; November 12th, 1895, $700; December 2nd, 1895, $1,000, making a total of $3,450.

VI.

The court erred in overruling the objection to and in admitting in evidence the testimony of J. J. Tobin relative to the "general reputation" of defendant in the custom house.

VII.

The Court erred in overruling the objection to, and in admitting in evidence, the testimony of Ling Yow, relative to whether he was convicted of perjury, and whether the verdict of the jury was guilty or not guilty, and as to what crime he was charged with in the Indictment, at the time he was tried.

VIII.

The Court erred in overruling the objection to the statement of the Special Attorney for the Government, that "no doubt every Chinese woman who did not pay "Williams was sent back." Said statement was made during the trial, and while the witness John H. Wise was giving his testimony, and tended to prejudice the jury against the defendant.

IX.

The Court erred in giving the following instruction to the jury, viz:

"There has been some testimony in support of the alle-
"gations of these indictments respecting the pecuniary
"condition of the defendant, and also testimony as to the
"extent of his compensation by the Government for ser-
"vices. This evidence was admitted in compliance with
"a well-known rule which establishes the relevance of
"evidence of this character where the charge is such as
"that alleged in these indictments.

"If the salary of the defendant, during the time alleged
"in the indictments and before then, was four or five
"dollars per day, and if the testimony shows to your
"satisfaction that he has deposited in bank or there was
"deposited to his credit in bank in the neighborhood of
"$4,750.00 from September 10th to December 17th, 1895,
"alleged in the indictments, then such testimony may be
"considered by you with a view of ascertaining how or by
"what means the defendant obtained that amount of
"money at a time when his compensation by the Govern-
"ment, as is claimed by the prosecution, was not to exceed
"about $150.00 per month.

" Where did he get such large sums of money ? From " what source other than the source named in the indict- " ments did he acquire this money ? Has he furnished " evidence explaining to your satisfaction the possession " of these sums of money ?

" These are all questions which you will consider, and " if any explanation made by the defendant as to how he " came by this money seems incredible, irrational, and " unsatisfactory you are at liberty to reject it and to act " upon the other testimony in the case. If, after doing " all this, you feel to a moral certainty and beyond a " reasonable doubt that he took the money as alleged in " the indictments, then your verdict should be guilty.

" In reference to the testimony which has been intro- " duced in the case showing the pecuniary condition of " the defendant, that if testimony explaining how, when, " and by what means the defendant acquired possession of " the sums of money shown to have been deposited in the " San Francisco Savings Union and Hibernia Bank could " have been offered by defendant, and he failed to produce " such testimony, then such failure may very properly be " taken into consideration by the jury in determining the " defendant's guilt or innocence.

" Where probable proof is brought of a state of facts " tending to criminate the accused, the absence of evidence " tending to contrary conclusion may be considered, al- " though this attitude of the case alone would not be en- " titled to much weight, because the burden of proof lies on " the prosecution to make out the whole case by sufficient " evidence; but when proof of inculpating circumstances " has been produced tending to support the charge, " and it is apparent that the accused is so situated that " he could offer evidence of all the facts and circumstances " as they existed, and to show, if such was the truth, that " the suspicious circumstances can be accounted for con- " sistently with his innocence, and he fails to offer such " proof, the natural conclusion is that the proof, if pro- " duced, instead of rebutting, would tend to sustain the " charges.

" Therefore, if in this case the defendant could have " produced testimony explaining his several deposits in " the San Francisco Savings Union and the Hibernia Bank " during the months of September, October, November, " and December, 1895, and has failed to produce such " testimony, then you are at liberty to infer that any ex- " planation in his power to make would have been, if " made, adverse and prejudicial to the defense.

" The law has been stated by the circuit court of ap- " peals for the eighth circuit very recently in the case of " Gulf, C. & S. *Co.* Railway *vs.* Ellis, in the 4th United " States circuit court of appeals. Judge Caldwell, speak- " ing for the circuit court of appeals, said:

" 'Now, it is a well-settled rule of evidence that when " the circumstances of proof tend to fix a liability on a " party who has it in his power to offer evidence of all the " facts as they existed and rebut the inferences which the " circumstances in proof tend to establish, and he fails to " offer such proof, the natural conclusion is that the proof, " if produced, instead of rebutting, would support the in- " ference against him, and the jury is justified in acting " upon that conclusion. " It is certainly a maxim," said " Lord Mansfield, " that all evidence is to be weighed " according to the proof which it was in the power of one " side to have produced and in the power of the other side " to have contradicted."

" Blach *vs.* Archer, Cowp., 63, 65.

" 'It is said by Mr. Starkie in his work on Evidence, " vol. 1, p. 54:

" 'The conduct of the party in omitting to produce that " evidence in elucidation of the subject matter in dispute " which is within his power and which rests peculiarly " within his own knowledge frequently affords occasion for " presumption against him, since it raises strong suspicion " that such evidence, if adduced, would operate to his " prejudice.'

" 'The same rule is applicable even in criminal cases. " Com. *vs.* Webster, 5 Cush., 295, 316; People *vs.* Mc " Whorter, 4 Barb., 438.' Respecting the contents of the

" affidavit made by the defendant and sworn to before " Lee D. Craig, a notary public in this city and county, " which has been read in evidence, I instruct you that the " prosecution is not bound by all the statements in said " affidavit. It is the duty of the jury to ascertain from " said affidavit and from the other testimony in the case " what portions of the same are true. The jury is then at " liberty to believe one part of it and to disbelieve the " other part.

" Such affidavit was introduced upon the theory that it " constituted an admission on the part of the defendant " as to his ownership of certain funds referred to therein. " The defense then insisted, as they had a right to, that " the entire affidavit should be read. The whole of it is " now before you, and it is for you to determine, from all of " the circumstances of this case, the situation of the de- " fendant, and all of the evidence that has been introduced, " as to what portion of said affidavit, if any, is true. You " are at liberty to believe or reject such portions of it as " you think may be worthy of belief or disbelief.

" In this respect I call your attention to the deposits " as they were made. The first deposit in the San Fran- " cisco Savings Union was made on October 29, 1895, " amounting to $350. On November 18, 1895, there was " a deposit of $400, and on December 17, 1895, there was " a deposit of $550, making a total of $1,3000.

" Then there was a deposit made with Hibernia Savings " and Loan Society on September 10, 1895, $300; on " September 24th, $150; October 8th, $800; October 23d, " $500: November 12th, $700: December 2d, $1,000, mak- " ing a total of $3,450, and adding the amount deposited " in the San Francisco Savings Union of $1,300, it makes " a total in three months and seventeen days of $4,750.

" These deposits were made, as you will observe, at " different times. In September he appears to have de- " posited the sum of $450; in October he deposited $1,650; " in November he deposited $1,100, and in December, up " to the 17th, he deposited $1,550, making a total, as I " said, of $4,750; nine deposits in three months and seven-

" teen days. Does the defendant's affidavit satisfactorily " explain or account for the receipt of these sums of " money ? "

X.

The Court erred in its judgment sentencing defendant to imprisonment in the California State Prison at San Quentin, for three years, and to pay a fine of $5,000.

ARGUMENT.

1. In the Court below, this case was tried and the defendant convicted and sentenced upon the theory that the Indictment charged him with the offense prescribed by sub-division one of Section 3169 of the Revised Statutes, taken in connection with Section 23 of the Revenue Act of February 8, 1875, Supplement Revised Statutes, page 61; the Court holding defendant to be a customs revenue officer and ascribing the authority for his appointment to a revenue law, to wit: Section 2606 of the Revised Statutes. (Transcript, p. 18 *et seq.*) In this, undoubtedly, the Court below committed a most palpable error. The defendant is not charged in the Indictment with being a revenue or customs revenue officer; on the contrary it is explicitly averred that he is an officer of the Department of Treasury designated "Chinese Inspector at the port of San Francisco," and that the duties of his office and his official functions are to "aid and assist the Col- " lector of Customs of said port in the enforcement and " carrying out of the various laws and regulations of the " said United States relating to the coming of Chinese " persons and persons of Chinese descent from foreign " ports to the United States at said port of San Fran- " cisco."

It is manifest then, that assuming for the purpose of this point, that the averment of official character is sufficient, defendant's official position appertains exclusively to the Chinese Exclusion Law. That law is not a revenue measure; nor is it made such by reason of the fact that its enforcement is committed to the Treasury Department; nor by reason of the fact that in some cases the Collector of Internal Revenue is required to enforce certain of its

provisions, while in other cases, the Collector of Customs is charged with the enforcement of other provisions. It is quite common for Congress to impose such duties on the Department of Treasury and the subordinate officers of that Department (*Nishimura Ekiu* vs. *United States, 142 U. S., 659)*; but it by no means follows that such laws are revenue measures, and the officers revenue officers. Section 3169 of the Revised Statutes applies only to revenue officers, even under the provisions of Section 23 of the Act of February 8th, 1875. That Act is a *revenue* law and the very language of Section 23 confines its operation to persons "acting under the authority of "any internal revenue or customs law or any revenue "provision of any law of the United States, when such "persons are designated or acting as officers or deputies, "or persons having the custody or disposition of any "public money." The Chinese Exclusion Act is in no sense a customs law, and we must confess our complete inability to discover a semblance of reasoning in the mental process, by means of which the lower court held the defendant to be within the provisions of subdivision one of Section 3169 of the Revised Statutes, and punished him accordingly. The court's conclusion is the more indefensible, in view of the fact that in its opinion on the motion in arrest of judgment (Trans. p. 20) reference is made to the very law under which defendant must have been appointed, if at all. That law is to be found in all the Appropriation Acts, from 1890 to the present, and in the following words, under the title of "Miscellaneous objects under the Treasury Department," viz.: "Enforcement of "Chinese Exclusion Act: To prevent unlawful entry of "Chinese into the United States, by the appointment of "suitable officers to enforce the laws in relation thereto "and for expenses of returning to China all Chinese per-"sons found to be unlawfully in the United States."

26 Statutes at Large, 387, 968.
27 Statutes at Large, 589.
28 Statutes at Large, 41, 390, 637, 846, 932.
29 Statutes at Large, 431.

And yet, notwithstanding the averments of the Indictment, the lower court asserts that defendant's appointment was made under the provisions of Section 2606 of the Revised Statutes, which section is one of a series of sections of the *revenue* law of July 14, 1870, relative to "internal taxes," and in its original and unabridged form provides for the appointment at certain ports of the United States of "such number of weighers, gaugers, " measurers and inspectors as may be necessary to exe- " cute the provisions of this Act." The defendant was not appointed under that law, and if he was, his position and duties as Chinese Inspector for the port of San Francisco, and his alleged extortion of money under color of *that* office, would be entirely and absolutely independent of and foreign to his position of inspector under Section 2606 of the Revised Statutes. It is an entirely different office. He is not charged with extortion under color of his office of revenue inspector—the office provided for in Section 2606.

It follows that the Indictment is fatally defective in being framed upon Section 3169, and that the judgment is for the same reason, not merely voidable, but absolutely void.

The law governing the offense of extortion "under color of office" is *Section 5481 of the Revised Statutes*, and the extreme penalty there prescribed is a fine of not more than $500, *or* imprisonment not more than one year; whereas, under Section 3169, the law by virtue of which defendant was sentenced and received the extreme penalty, the punishment is a fine of not less than $1000 nor more than $5000 *and* imprisonment for not less than six months nor more than three years.

2. Even if the Indictment in a case like this could be framed under subdivision one of Section 3169, it would not be valid unless it clearly and unmistakably brought the case within the language of that law.

United States vs. Brewer, 139 U. S., 288.
Hess vs. United States, 124 U. S., 486.
Bishop on Statutory Crimes, Sec. 380.

The Indictment in this case does not do so. It charges extortion " under color of office "; whereas, the extortion provided for in Subdivision one of Section 3169, must be " under color of law."

3. The Indictment is also fatally defective in this: It avers that the money was extorted under color of office, and then states in detail how it was obtained, and that specific statement of the facts shows that the money was not obtained under color of office, but was obtained by false representations ; such being the case it is not extortion.

Collier vs. State, 55 Ala., 125.

4. The Indictment is also fatally defective in this: It does not sufficiently show that defendant was at the time of the alleged extortion an officer of the United States, either *de facto* or *de jure*. The allegation that he was an officer of the Department of Treasury of the United States does not necessarily indicate that he is an officer of the United States ; nor is such an averment sufficiently specific. The allegation that he was " designated as Chinese inspector at the port of San Francisco " does not supply the defect. There is no such officer known to the law as that of Chinese inspector, and even if there was, to allege as does this Indictment that the defendant was a person *designated as Chinese inspector* at said port of San Francisco, is clearly not the equivalent of an allegation that he was Chinese inspector.

II.

The lower court erred in consolidating the Indictments against the defendant's exception. (Trans. 43.) The Indictments state " substantive offences, separate and dis- " tinct, complete in themselves and independent of each " other, committed at different times and not provable by " the same evidence."

McElroy vs. United States, 164 U. S., 76.

The offences could not have been joined in one Indictment, and therefore the Indictments were erroneously consolidated.

Sec. 1024 Revised Statutes.

III.

The court below fell into flagrant error in admitting in evidence against defendant's objection, his affidavit filed in the Superior Court in and for the City and County of San Francisco, in the case of *Williams* vs. *Williams*. (Trans. p. 32.) The purpose for which the court admitted the testimony is stated in the instruction to the jury (Trans. p. 42) to be that it constituted "an admission on "the part of defendant as to his ownership of certain "funds referred to therein." On that basis the court went on and instructed the jury that the *onus* was on the defendant to show that he acquired those funds innocently. That instruction we will attack presently; but even assuming what is not the fact, that the affidavit had such tendency as the court held it to possess, and that it furnished evidence incriminating in character, its admission was in that case in plain violation of Section 860 of the Revised Statutes. It constituted evidence obtained from a party by means of a judicial proceeding and for that reason was not admissible.

IV.

There is likewise manifest error in admitting the bank books in evidence (Trans. p. 34); especially the bank book of Isabella M. Williams,—a person not shown to be in privity with defendant. These bank books, together with the affidavit, constitute the evidence on which the lower court gave to the jury a certain exceedingly erroneous instruction; in the discussion of that error we can better demonstrate the injury we sustained by the admission in evidence of the affidavit and bank books, and therefore refer to what is hereinafter said upon the subject.

V.

The testimony of J. J. Tobin (Trans. p. 35 *et seq*), introduced and by the court admitted to impeach the credibility of defendant, is another instance of flagrant error. A witness cannot be impeached by evidence of his reputation for truth, honesty and integrity, *in the custom house*, and the defendant's objection should have been sustained.

People vs. Markham, 64 Cal., 163.

VI.

Ling Yow was one of the witnesses for the defendant, and after giving material testimony in support of defendant's case (Trans. p. 36), he was asked as to whether he was ever convicted of perjury, what offense he was charged with in the Indictment, and whether the verdict was guilty or not guilty. Objection was made to each of those questions as being irrelevant, incompetent, and that the proper foundation had not been laid and that the record was the best evidence. The objections were overruled and exceptions reserved. The rulings were clearly erroneous.

People vs. Reinhart, 39 Cal., 449.
1 Greenleaf on Evidence, Sec. 457.
People vs. Hamblin, 68 Cal., 103.
People vs. Crapo, 76 N. Y., 293.

VII.

The action of the lower court in overruling the objection made to the statement of Mr. Henley, special counsel for the prosecution, (Trans. p. 35) is gross error. When he stated in the hearing of the jury that "no doubt every "Chinese woman who did not pay Williams was sent "back" to China, it was the duty of the court to rebuke counsel for making such an improper remark; but instead of a rebuke, the court gave emphasis to and corroborative of the statement by overruling defendant's objection to it. Such action on the part of the court constitutes reversible error.

Graves vs. United States, 150 U. S., 120.

VIII.

The court in instructing the jury (Trans. p. 41), adverted to the affidavit of defendant in the case of *Williams* vs. *Williams*, and to the various deposits shown by the bank books and aggregating $4,750, and told the jury that they might consider those deposits in connection with the other fact that the defendant received from the Government a salary not to exceed about $150 per month, and that they were to ascertain how or by what means the defendant obtained the $4,750. "Where did he get such large sums of money? "from what source other than the source named in the

" Indictments did he acquire this money ? Has he fur-
" nished evidence explaining to your satisfaction the
" possession of these sums of money ?" * * * *
" Therefore if in this case the defendant could have pro-
" duced testimony explaining his several deposits in the
" San Francisco Savings Union and the Hibernia Bank
" during the months of September, October, November,
" and December, 1895, and has failed to produce such
" testimony, then you are at liberty to infer that any ex-
" planation in his power to make would have been if
" made, adverse and prejudicial to the defense." These are portions of the instructions given; there is more of a like character. That the District Judge did not understand the law, is apparent. In the first place he was wrong in referring to the deposit in the Hibernia Bank as the *defendant's* deposit; there is no evidence to that effect in the case, and the transcript of the record at page 35, virtually so declares. In the next place the combined Indictments charged an extortion of but $185, and yet the instruction called upon the defendant to explain deposits made before and after the alleged commission of the offenses, and aggregating $4,750. In the next place, as the transcript affirmatively shows at page 43, there was no evidence that any part of said sum of $4,750 constituted the "fruit of crime" (*3 Greenleaf on Evidence, Sec. 31*), nor that any portion of that sum embraced the $185, "the money " charged in the Indictments herein to have been unlaw-
" fully taken by defendant." In short, there was nothing *suspicious* in character in the fact that the deposits had been made; and it is only where there exists suspicious and inculpatory circumstances relative to the acquisition of the money that the rule referred to by the lower court has any application. The presumption of innocence protected the defendant from every adverse inference that the lower court told the jury they could draw from the unexplained possession by defendant of the money on deposit in his name. It was not shown to be the fruit of crime; it was not shown to be suspicious or inculpatory, and therefore no explanation from defendant was neces-

sary. It is to be noted that the record affirmatively shows that the bank books and the affidavit are the only evidence before the court relative to said deposits. (Trans. p. 35.) The true rule is stated in *Graves* vs. *United States, 150 U. S., 120,* and it is quite clear that the District Judge did not correctly understand the rule nor the authorities he cited. His instruction violates the law as declared in

Chaffee vs. United States, 18 Wall., 516, 545.
Doty vs. State, 7 Blackf., 427.

IX.

The judgment is undoubtedly void. It is based upon Section 3,169 of the Revised Statutes, and we have pointed out that the case is not within the provisions of that section. The penalty for extortion under "color of office" is prescribed by Section 5,481, and is limited to one year or a fine of $500. The judgment is also void because by its terms the defendant is sentenced for extorting $85 "under color of his office as Chinese inspector of the Department of Treasury at the port of San Francisco." (Trans. 17). There is no such office known to the law. The judgment is likewise void for the reason that the Indictment is insufficient to sustain it—a point hereinbefore fully discussed.

We respectfully submit that the judgment ought to be *reversed.*

GEORGE D. COLLINS,
Counsel for Plaintiff in Error.

Nos. 266 and 267.
Supp. Brf. of Collins for P. E.

Filed Oct. 26, 1897.

Supreme Court of the United States.

OCTOBER TERM, 1897.

Nos. 266 and 267.

RICHARD S. WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

SYNOPSIS OF ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

GEORGE D. COLLINS,
Counsel for Plaintiff in Error.

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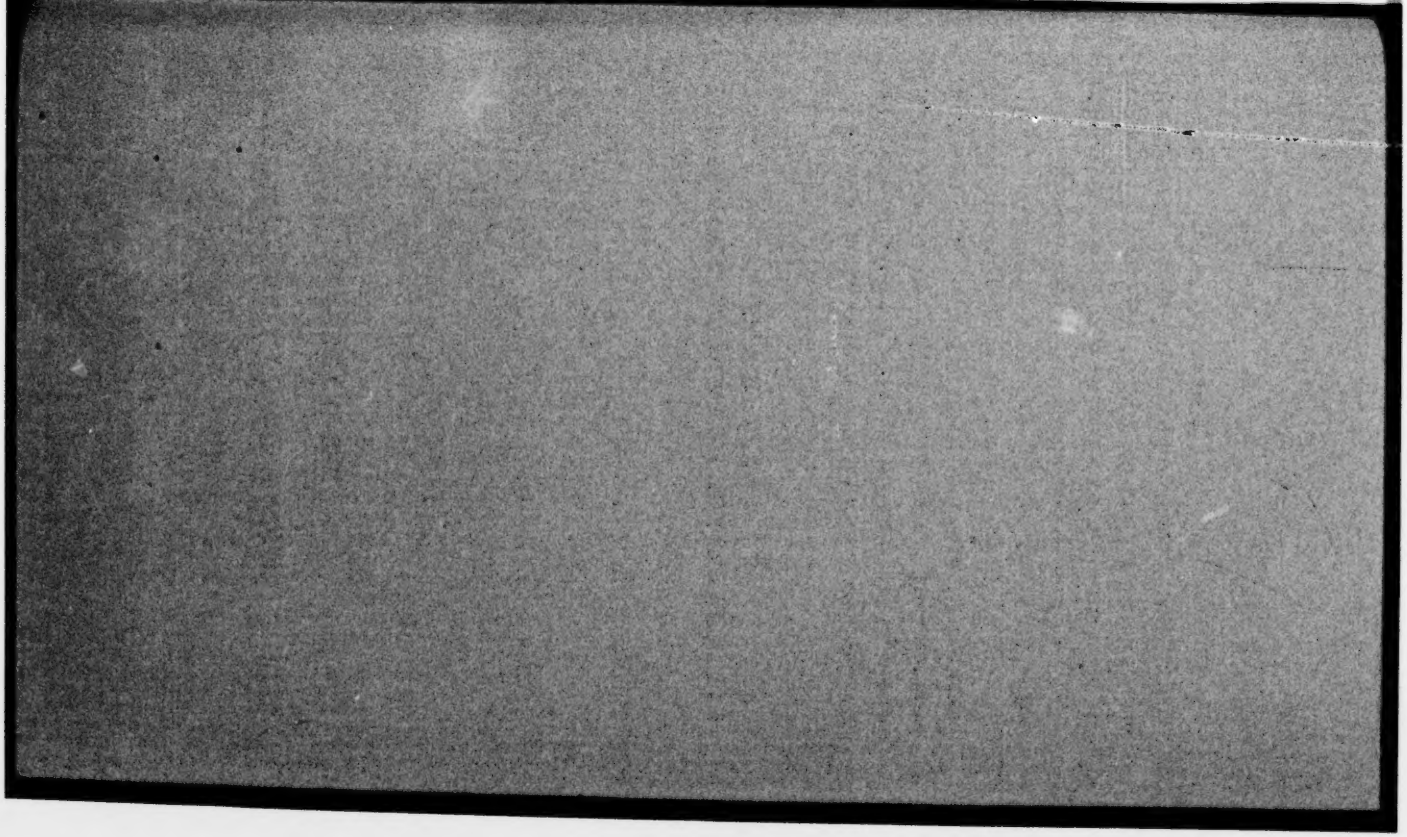

IN THE

Supreme Court of the United States

OCTOBER TERM, 1897.

Nos. 266 and 267.

RICHARD S. WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

SYNOPSIS OF ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

These cases are before this Court on writs of error directed to the district court for the northern district of California. There are two judgments to be reviewed. The cases were tried together in the district court, that court having made an order consolidating the indictments.

Each indictment contains two counts. The objection was raised by demurrers that the indictments do not charge a criminal offense. The demurrers were overruled.

The cases were tried and the defendant convicted. He then secured the services of other counsel, who made a motion in arrest of judgment.

The motion was sustained in respect to the second count in each indictment. The defendant was then sentenced in each case to imprisonment in the penitentiary for the term of three years and fined five thousand dollars, with further imprisonment until the fine be paid. The sentences are to run consecutively and not concurrently.

The points relied upon in support of the prayer for reversal are the same in each case, with one exception, to wit, in the case where it is charged that the money was extorted from Wong Sam. We there make the additional point that the evidence is insufficient.

I.

The first objection we make to the judgments is that the indictments do not charge a criminal offense. They attempt to charge malfeasance in office. On the margin of each indictment is a reference to the statutes upon which it was drawn.

That reference was put there by the pleader, the person who framed the indictment. The district court held that the indictments were rightly drawn under the statutes referred to, and it is now contended by the Government that those statutes are applicable to these cases on the theory that defendant was a customs inspector. The indictments were certainly drawn under the statutes referred to. The language used in the indictment is sufficiently descriptive of the statutes to demonstrate that they alone are the basis of the pleading.

We maintain, first, that the statutes mentioned, to wit, section 23 of the act of February 8, 1875, and sub-

division one of section 3169 of the Revised Statutes, have no application to the facts set forth in the indictments; that therefore no crime is charged. We say in that respect the statutes only apply to persons appointed or acting under authority of an internal or customs *revenue* law or "any revenue provision of any law of the United States," and that the defendant was not so appointed or acting; that he was not a customs inspector; but, on the contrary, that he was appointed under a non-revenue law, to wit, that portion of the appropriation acts relative to the enforcement of the Chinese exclusion law, where it is provided, *inter alia*, that suitable officers are to be appointed to enforce the laws in relation to the exclusion of Chinese. We also say that even if the position of the Government is correct, to wit, that defendant was a customs inspector and therefore a *revenue* officer, that the indictments do not allege extortion under color of *that* office, but, on the contrary, allege extortion under color of the office of Chinese inspector—the office conferred on defendant for the purpose of enforcing a non-revenue law—the Chinese exclusion act; and we further say that even if the fact were otherwise, and even if we assume that the extortion was had under *color of the office of customs inspector*, that still the indictments are insufficient, because the extortion prohibited by section 3169 of the Revised Statutes is extortion under color of *law*, whereas these indictments charge extortion under color of *office*.

Reverting to the position taken by the Government—that defendant was appointed a customs inspector pursuant to the provisions of section 2606 of the Revised Statutes, and that therefore he is amenable to the provisions of section 3169 of

the Revised Statutes—we ask, Is there anything independent of the *ipse dixit* itself which tends to show that defendant was appointed a customs inspector? The court takes *judicial notice* of the action of the Treasury Department appointing defendant Chinese inspector to enforce the provisions of the exclusion law.

The court has *judicial knowledge* of the character of the appointment. (1 Greenleaf on Evidence, sec. 6; N. Y. & Md. R. R. Co. *vs.* Winans, 17 How., 31, 41; Brown *vs.* Piper, 91 U. S., 42; Campbell *vs.* Wood, 116 Mo., 202; People *vs.* Johr, 22 Mich., 261.)

True, the facts composing that knowledge are not set forth in the record as *evidence* in the case; it would be very absurd if they were, just as absurd as though the law governing the case was set forth as matter of evidence. The judicial knowledge of the court dispenses with evidence of facts within the scope of that knowledge. This Court, then, taking judicial notice of defendant's appointment, knows that it is as follows, viz:

"TREASURY DEPARTMENT,
"OFFICE OF THE SECRETARY,
"WASHINGTON, D. C., *November* 10, 1893.

"Division of appointments, H. K.

"Mr. R. S. WILLIAMS, *San Francisco, Cal.*

"SIR: You are hereby appointed an inspector to enforce the provisions of the Chinese exclusion acts, at a compensation of four dollars ($4.00) *per diem*, with actual and necessary expenses while traveling on official business, payable from the appropriation to defray the expenses incurred under said acts, the appointment to take effect from date of oath.

"You will report in writing to the supervising agent of this Department for instructions and assignment to duty.

"Respectfully yours,

"(Signed) W. E. CURTIS,
"*Acting Secretary.*

"R. H.

"H.
"J."

This Court knows, therefore, that defendant was not appointed customs inspector pursuant to section 2606 of the Revised Statutes, but was appointed Chinese inspector pursuant to the provision contained in the appropriation acts relative to the enforcement of the Chinese exclusion law by the *appointment* of suitable officers for the purpose, not, as contended by the Government, by the assignment of revenue officers to the duty, but by *appointment* of officers for the specific purpose of enforcing that law. Then, again, if the defendant was a customs inspector, he was a revenue officer, and he would therefore be subject to the provisions of section 3169 without reference to section 23 of the act of February 8, 1875, and in that event the latter act must be considered irrelevant; if irrelevant, then as the indictments were *ex vi termini* drawn under that act, the descriptive averments being designed to bring the cases within that act, the indictments must fail (Bishop's Statutory Crimes, 1st ed., sec. 380; 1 Bishop's New Crim. Proc., sec. 612). The Assistant Attorney General is mistaken in assuming that section 23 of the act just mentioned applies the penalties prescribed in pre-existing revenue laws to officers of the Department of Treasury. It is only to such officers of the Treasury Department as are appointed or acting under a

revenue law, *and* who are not within the provisions of pre-existing laws, that section 23 applies.

II.

The error of the district court in consolidating the indictments lies in the fact that the same evidence is not applicable to the proof of the allegations of both indictments. The effect of combining the indictments and having but one trial was to infringe upon the elementary rule that evidence of one crime is no evidence of another; while there are exceptions to the rule—exceptions relative to proof of *scienter*—those exceptions have no application here. The jury cannot be expected to base the verdict upon the evidence appropriate to each case, when the cases are tried as one and the testimony introduced and admitted as though there was but one case on trial.

III.

If the defendant's affidavit made by him in his divorce suit was relevant on the trial had on these indictments, then undoubtedly its admission in evidence, against defendant's objection and exception, was clearly in violation of section 860 of the Revised Statutes. That law applies to all evidence obtained from defendant "by means of a judicial proceeding." The defendant's affidavit was evidence. Section 2002 of the Code of Civil Procedure of the State of California provides: "The testimony of witnesses is taken in three modes: 1, by affidavit; 2, by deposition; 3, by oral examination."

It is immaterial whether the evidence was obtained through voluntary or involuntary disclosure, if it would not have been obtained, were it not for the pendency of the "judicial proceeding."

Section 860 of the Revised Statutes was intended to cover cases not within the fifth amendment, and it must be liberally construed; in a broad sense, every disclosure made by a person under oath and as a witness in court in a judicial proceeding is produced by means of the proceeding, and therefore, strictly speaking, is not voluntary. The process of law is coercive.

IV.

The instruction to the effect that the jury could infer from the failure of defendant to explain from what source and how he obtained *prior* to the alleged commission of the extortion referred to in the indictments certain sums of money, is not sustained by the authorities cited in the Assistant Attorney General's brief; those authorities confine the rule they announce to money acquired or in the possession of a defendant *subsequently* to the commission of the offense; and in reason that must be so. The possession of money *before* the offense was committed could not show in the least degree that it was the product of the crime. Then as to that portion of the instruction relative to money *deposited* in bank *after* the alleged commission of the extortion referred to in the indictments, in the first place, the fact of then depositing the money in bank would furnish no evidence that the money was acquired *subsequent* to the offense. In the next place, there being no evi-

dence showing or tending to show that when defendant acquired the money he was impecunious or insolvent and the record affirmatively stating (p. 43) that there is nothing indicating that the money is the "fruit of crime," no explanation on his part was necessary. In *Com. vs. Churchill*, 11 Met., 534, the rule relied upon by the Assistant Attorney General is correctly stated, together with its limitations, and as there construed does not sustain his position in these cases. In his brief the Assistant Attorney General, in discussing the admission of the evidence upon which the instruction is based, says:

"This testimony was all admissible for the reasons before stated, viz., to show in the hands of the defendant at or about the time of the alleged offense an unusual and unreasonable amount of money. It was to show a sudden and material change in the financial circumstances of the defendant indicating a recent receipt of money about the time of the commission of the offense in some other way than the course of his business."

Now, the conclusive answer to all that is, the evidence has no such tendency. On the contrary, the affidavit explicitly states that defendant had possession of all the money and more *prior* to his employment by the Government. True, the lower court told the jury that they were at liberty to accept as true such part of the affidavit as they saw fit and to reject the rest; but that instruction is radically wrong, for there was no evidence tending to impeach the statements in the affidavit. The record affirmatively shows such to be the fact (Trans., 34, 43, 45). Surely the jury could not arbitrarily accept a portion of the affidavit and reject the rest. How it is possible to reconcile the instructions of the lower court with the doctrine of

Chaffee vs. United States, 18 Wall., 545; *Doty vs. State*, 7 Blackf., 427, is certainly a question that the Government makes no attempt to answer.

Finally, the instructions virtually permit the jury to find the defendant guilty merely upon his failure to explain his acquisition of the money deposited in the Hibernia bank and in the bank of the San Francisco Savings and Loan Society. Such an instruction, even in a larceny or embezzlement case, would be clearly erroneous (*People vs. Ah Ki*, 20 Cal., 179; *People vs. Beaver*, 49 Cal., 57). It must be borne in mind that even where evidence of the possession of property is admissible in a criminal case, that it is addressed exclusively to the identity of the criminal and not to the crime. It is never considered evidence of the *corpus delicti*. Hence the necessity of a *prima facie* showing that the possession is a guilty one. Until that showing is made it is not incumbent on the defendant to explain his possession. Tested by that rule, the instructions in question are manifestly erroneous.

V.

The errors relative to the admission of evidence other than the affidavit are sufficiently discussed in our brief. In respect to the error relative to the misconduct of the special attorney for the Government, we will simply add that it was not merely colloquy between counsel nor a side remark, but was a very prominent feature of the trial and within the cognizance of the jury. The ruling of the lower court made the misconduct a part of the prosecution's case.

VI.

The point as to the insufficiency of the evidence in the case where it is charged the money was extorted from Wong Sam is likewise adequately presented in our brief. The Government, in its brief makes no attempt to reply to the point.

Respectfully submitted.

GEORGE D. COLLINS,
Counsel for Plaintiff in Error.

No. 266 and 267.

Brf. of Atty. Gen.l (Boyd) for D.

Filed Oct. 25, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

RICHARD S. WILLIAMS, PLAINTIFF in error,
v.
THE UNITED STATES.
} Nos. 266, 267.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

JAS. E. BOYD,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

RICHARD S. WILLIAMS, PLAINTIFF in error, v. THE UNITED STATES. } Nos. 266, 267.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

There are two cases pending in this court at this term under the foregoing caption, both involving substantially the same points. They are numbered on the docket of the Supreme Court 266 and 267, respectively. They were numbered in the court below 3267 and 3268, and were consolidated by order of the court below for trial.

The indictment in No. 266, which was 3267 in the court below, is as follows (Rec., p. 3):

> In the district court of the United States in and for the northern district of California.
>
> (On the margin:) Sec. 3169, Rev. Stat., sub. 1 and 2, and sec. 23, act of Feb'y 8, 1875, vol. 1, 2nd ed., supp. Rev. Stat.
>
> 6895——1

At a stated term of said court, begun and holden at the city and county of San Francisco, within and for the northern district of California, on the first Monday in February, in the year of our Lord one thousand eight hundred and ninety-six—

The grand jurors of the United States of America within and for the district aforesaid on their oath present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the said United States, duly appointed and acting under the authority of the law of the said United States, and being then and there a person designated as Chinese inspector at said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, did then and there, as such officer, wilfully, knowingly, corruptly, and feloniously, for the sake of gain and contrary to the duty of his said office, and by color thereof, ask, demand, receive, extort, and take of one Wong Sam, a Chinese person, a certain sum of money, to wit, one hundred dollars, which said sum of money was not due to him, the said Richard S. Williams, and which the said Richard S. Williams was not then and there or at

all, by virtue of his said office, entitled to ask, demand, receive, or take of said Wong Sam or any other person—that is to say, that on the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-five, there arrived at the port of San Francisco aforesaid, from a foreign port or place, to wit, the port of Hongkong, in the Empire of China, a male person of Chinese descent, to wit, one Wong Lin Choy, who claimed to the collector of customs that he was entitled to land, be, and remain within the United States on the ground that he was a native born of the United States.

That thereafter such proceedings were had and taken before said collector of customs in accordance with law that the said Wong Lin Choy was by said collector of customs adjudged to be entitled to and permitted to land at said port as a native born of said United States of Chinese descent, and to be and remain in the said United States; that thereafter, and after the said Wong Lin Choy was adjudged to be permitted to land at said port of San Francisco, by said collector of customs, to wit, on the eighteenth day of September, in the year of our Lord one thousand, eight hundred and ninety-five, at said city and county of San Francisco, State and northern district of California, the said Richard S. Williams corruptly and extorsively, for the sake of gain and contrary to the duty of his said office and under color thereof, did extort, receive, and take of said Wong Sam, who was then and there interested in the application or claim of said Wong Lin Choy as aforesaid, a sum of money, to wit, the sum of one hundred dollars as aforesaid, the said Richard S. Williams, under color of his said office, having previously, to wit, on the thirty-first day of August, in the year of our Lord one thousand, eight hundred and ninety-

five, at said city and county, State, and district aforesaid, feloniously and corruptly obtain and exacted a promise from said Wong Sam for the payment thereof by him to him, the said Richard S. Williams, by then and there falsely and corruptly representing to the said Wong Sam that without the payment thereof to him, the said Richard S. Williams, the said Wong Lin Choy would not be permitted to land at said port, be or remain within the United States, but would be returned to said foreign port whence he came——

Against the peace and dignity of the United States of America and contrary to the form of the statute of the United States of America in such case made and provided.

Second count.

And the grand jurors aforesaid on their oath aforesaid do further present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court, then and there being, then and there being an officer of the Department of the Treasury of the United States, duly appointed and acting under the authority of the law of the said United States, and being then and there a person designated as Chinese inspector of said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the United States relating to the com-

ing of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, not regarding the duties of his office, willingly and corruptly did then and there and under color of his said office take and receive of one Wong Sam, who was then and there interested in the claim of one Wong Lin Choy to be permitted to land at the port of San Francisco aforesaid, a sum of money, to wit, one hundred dollars, as and for a fee, compensation, and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of the application of said Wong Lin Choy, who then and there claimed to the collector of customs of said port to be entitled to land at said port of San Francisco from a foreign port, to wit, the port of Hongkong, in the Empire of China, and to be and remain in the United States under the claim that he was a native born of the said United States, which said application was then and there pending and under investigation before said collector of customs as aforesaid, whereas in truth and in fact no fee, compensation, or reward was then or at any other time due or owing from the said Wong Sam or any other person to the said Richard S. Williams for such services or any services of him, the said Richard S. Williams, in connection with said matter or at all, nor was he, the said Richard S. Williams, entitled to the same by law—

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

HENRY S. FOOTE,
United States Attorney.

and the indictment in No. 267, which was 3268 in the court below, is as follows (Rec., p. 3):

> In the district court of the United States in and for the northern district of California.
>
> (On the margin:) Sec. 3169, Rev. Stat., sub. 1 and 2, and sec. 23, act of Feb'y 8, 1875, vol. 1, 2nd ed., Supp. Rev. Stat.
>
> At a stated term of said court, begun and holden at the city and county of San Francisco, within and for the northern district of California, on the first Monday in February, in the year of our Lord one thousand eight hundred and ninety-six—
>
> The grand jurors of the United States of America within and for the district aforesaid, on their oath present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the sixth day of November, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the said United States, duly appointed and acting under the authority of the laws of the said United States, and being then and there a person designated as Chinese inspector at said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the said United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, did then and there, as such officer, wilfully, knowingly, corruptly, and

feloniously, for the sake of gain and contrary to the duty of his said office and by color thereof, ask, demand, receive, extort, and take of one Chan Ying, a Chinese person, a certain sum of money, to wit, the sum of eighty-five dollars, and which said sum of money was not due to him, the said Richard S. Williams, and which the said Richard S. Williams was not then and there or at all, by virtue of his said office or otherwise, entitled to demand, ask, receive, or take of said Chan Ying or any other person—that is to say, that on November the second, in the year of our Lord one thousand eight hundred and ninety-five, there arrived at the port of San Francisco aforesaid from a foreign port or place, to wit, the port of Hongkong, in the Empire of China, a male person of Chinese descent, to wit, one Chin See Hung, who claimed to the collector of said port that he was entitled to land, be, and remain within the United States on the ground that he was a native born of the said United States; that thereafter such proceedings were had and taken before said collector of customs in accordance with law that the said Chin Shee Hung was by said collector of customs, to wit, on the fifth day of November, in the year of our Lord one thousand eight hundred and ninety-five, adjudged to be entitled to land at said port as a native born of said United States of Chinese descent, and to be and remain within the said United States; that thereafter and after the said Chin Shee Hung was adjudged to be permitted to land at said port of San Francisco by said collector of customs, to wit, on the sixth (6) day of November, in the year of our Lord one thousand eight hundred and ninety-five, at said city and county of San Francisco, State and northern district of California, the said Richard S. Williams corruptly and extorsively, for the sake

of gain and contrary to the duty of his said office and under color thereof, did extort, receive, and take of said Chan Ying, who was then and there interested in the application or claim of said Chin See Yung, as aforesaid, a sum of money, to wit, the sum of eighty-five dollars as aforesaid, the said Richard S. Williams, under color of his said office, having previously theretofore, to wit, on the fourth day of November, in the year of our Lord one thousand eight hundred and ninety-five, at said city and county, State and district aforesaid, feloniously and corruptly obtain and exact a promise from said Chan Ying for the payment by him to him, the said Richard S. Williams, by then and there falsely and corruptly representing to the said Chan Ying that without the payment thereof to him, the said Richard S. Williams, the said Chin Shee Hung would not be permitted to land at said port, be or remain within the United States, but would be returned to said foreign port whence he came—

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

Second count.

And the grand jurors aforesaid on their oath aforesaid do further present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the sixth (6) day of November, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the

United States, duly appointed and acting under the authority of the law of the said United States, and being then and there a person designated as Chinese inspector of said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, not regarding the duties of his said office, did then and there and under color of his said office, wilfully and corruptly demand, take, and receive of one Chan Ying, who was then and there interested in the claim of one Chin Shee Hong to be permitted to land at the port of San Francisco aforesaid, a sum of money, to wit, eighty-five dollars, as and for a fee, compensation, and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of the application of said Chin Shee Hong, who then and there claimed to the collector of customs at said port to be entitled to land at said port of San Francisco from a foreign port, to wit, the port of Hongkong, in the Empire of China, and to be and remain in the United States under the claim that he was a native born of the said United States, which said application was then and there pending and under investigation before said collector of customs as aforesaid, whereas in truth and in fact no fee, compensation, or reward was then or any other time due or owing from the said Chan Ying or any other person to the said Richard S. Williams in connection with said matter or at all, nor was he, the said Richard S. Williams, entitled to the same by law.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

HENRY S. FOOTE,
United States Attorney.

The first assignment of error is based upon the ruling of the court overruling the demurrers to the indictments. The demurrer of defendant to indictment in No. 266 is found on pages 6 and 7 of the record, and the demurrer to the indictment in No. 267 is found on pages 6 and 7 of the record in that case.

The two indictments, which were consolidated in the court below, each contain two counts. A verdict of guilty upon the trial of the consolidated indictments was rendered by the jury, but, on the motion of defendant's counsel, judgment was arrested on the second counts (Record, p. 17), and the defendant sentenced under the verdict of guilty rendered by the jury upon the first count in each indictment.

The general ground of defendant's demurrer to the indictment, which is the basis of the first exception, is that no offense under the laws of the United States is charged. *In all the counts in the indictments it is charged that the defendant was an officer of the Department of the Treasury of the United States, duly appointed and acting under the authority of the laws of the United States, and designated as Chinese inspector at the port of San Francisco, and by virtue of his office authorized, directed, and required to aid and assist the collector of customs at said port in the enforcement and carrying out of the various laws*

and regulations of the United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco.

The indictments are founded upon section 3169 of the Revised Statutes of the United States and section 23 of the act of February 8, 1875. (18 Stat. L., p. 312.)

Section 2606, Revised Statutes, is as follows:

> SEC. 2606. At each of the ports of Providence, Norfolk, Portland in Maine, Buffalo, Chicago, Detroit, Cincinnati, Saint Louis, Evansville, Milwaukee, Louisville, Cleveland, San Francisco, Portland in Oregon, Memphis, and Mobile there shall be appointed such number of weighers, gaugers, measurers, and inspectors as may be necessary.

This section is a part of the general statute relating to customs duties, and authorizes the appointment of inspectors in the customs service, and the power of appointment is by law conferred on the Treasury Department.

The bill charges that the defendant was an officer of the Department of the Treasury of the United States, duly appointed and acting under authority of the laws of the United States, and being then and there a person designated as Chinese inspector at the said port of San Francisco.

Section 3169 of the Revised Statutes provides that—

> Every officer or agent appointed and acting under the authority of any revenue law of the United States—
>
> First. Who is guilty of any extortion or willful oppression under color of law; or,

> Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty;
>
> * * * * *
>
> shall be dismissed from office, and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years.
>
> * * * * *

and section 23 of the act of February 8, 1875 (18 Stat. L., 307), provides as follows:

> That all acts and parts of acts imposing fines, penalties, or other punishment for offenses committed by an internal-revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever, employed, appointed, or acting under the authority of any internal-revenue or customs law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money.

If, in fact, the defendant was an officer of the Department of the Treasury, then he would be indictable under section 3169, because section 23 of the act of February 8, 1875, includes it. The defendant is charged as being an officer of the Department of the Treasury of the United States, appointed and acting under the authority of the laws of the United States, and designated as a Chinese inspector. As before stated, the authority for

his appointment at the port of San Francisco is found in section 2606 of the Revised Statutes, which is in the title of the Revised Statutes relating to the "Collection of duties upon imports." It has been decided that ~~a collector~~ an inspector of customs is a public officer. (*Hooper et al.* v. *51 Cases of Brandy*, 2 Ware, 371; 12 Fed. Cases, 465.)

The act of May 6, 1882, entitled "An Act to execute certain treaty stipulations relating to Chinese," provided in section 8 that the master of any vessel arriving in the United States from any foreign port or place, before landing, or permitting to land, any Chinese passengers, shall deliver and report to the collector of customs of the district in which the vessel has arrived a list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time, together with certain particulars as to name, etc. This list was to be sworn to by the master in the manner required by law in relation to the manifest of the cargo, and any willful refusal or neglect to comply with the requirement incurred the same penalties and forfeitures provided for a refusal or neglect to report and deliver a manifest of the cargo.

Section 9 made it the duty of the collector, or his deputy, to examine such Chinese before landing, comparing the certificates issued under the act with the list and with the passengers, and no passenger should be allowed to land in the United States from such vessel in violation of law.

Section 10 provided that every vessel whose master should knowingly violate any of the provisions of the act should be deemed forfeited to the United States, and

should be liable to seizure and condemnation in any district of the United States into which the vessel might enter or in which she might be found. The enforcement of the provisions of this act relating to the coming of Chinese persons to the United States was thus placed in charge of the collectors of customs and the officers of that service. Congress has passed several acts forbidding the immigration of particular classes of foreigners, and has committed the execution of these acts to the Secretary of the Treasury, to collectors of customs, and to inspectors acting under their authority. (*Nishimura Ekiu* v. *United States*, 142 U. S., 651,659.)

In the several acts making appropriations for the sundry civil expenses of the Government for the year 1891 and subsequent years there has been an appropriation for the enforcement of the Chinese exclusion act, under the Treasury Department, in the following terms:

> To prevent unlawful entry of Chinese into the United States, by the appointment of suitable officers to enforce the laws in relation thereto, and for the purpose of returning to China all Chinese persons found to be unlawfully within the United States.

The defendant, although appointed an inspector under the customs law, was designated and acting as an officer under the laws relating to Chinese immigration. He was an officer in the customs service required to perform duties not strictly of a revenue character, but duties of an official character imposed upon him by law. This seems to be sufficient to bring the defendant within the provisions of section 23 of the act of February 8, 1875.

He was a person appointed under the authority of a customs law and designated or acting as an officer. This act, in effect, reaches all persons appointed, employed, or acting under the authority of any revenue or customs law, when acting officially in the performance of duties imposed upon them by laws, whether such duties are strictly of a revenue character, or pertain to some other branch of the public service, but which Congress for convenience or the economy of administration has seen fit to impose upon such officers.

If these premises can be maintained, then if the defendant was guilty of extortion, or if he knowingly demanded other or greater sums than were authorized by law, or received any fee, compensation, or reward, except as by law prescribed, for the performance of any duty, he was guilty of a criminal offense under section 3169 coupled with the other sections referred to.

With respect to the form of an indictment, it is not always necessary that the precise words of the statutes should be employed in the allegation, but their equivalents will often answer. If enough of the words of a statute are used to identify the statute on which the indictment is drawn, it is sufficient. (Bishop on Statutory Crimes, sec. 380.)

It will be observed that the allegations of the indictment are broader than the words of the statute under which it is drawn. The crime is charged with precision and certainty, and every ingredient of which it is composed accurately and clearly alleged.

In this discussion of the sufficiency of the bill of indictment reference is had alone to the first counts in

the two indictments, because the motion in arrest of judgment was allowed by the court below as to the second counts in the two bills of indictment. The degree of particularity necessary in setting out an offense in a bill of indictment is treated of in Wharton's Crim. Pl. & Pr., 166, and the objects of the particularity required specified. Among other things, Wharton says:

> The objects of particularity in a bill of indictment are in order—
>
> First. To identify the charge, lest the grand jury should find a bill for one offense and the defendant be put upon his trial for another.
>
> Second. That the defendant's conviction or acquittal may inure to his subsequent protection should he be again questioned on the same grounds.
>
> Third. To enable the defendant to prepare for his defense in particular cases, and to plead in all, etc.

Clark's Crim. Proc., 150, is also cited. This authority says:

> The indictment must state the offense, and must state it with sufficient certainty—
>
> First. To enable the court to see that, if the facts stated are true, an offense has been committed by the defendant.
>
> Second. To enable the court to know what punishment to impose in case of a conviction.
>
> Third. To enable the court to confine the proof to the offense charged, so that the defendant will not be accused of one offense and convicted of another.
>
> Fourth. To give the defendant reasonable notice of the particular charge he will be called upon to answer, and to enable him to properly prepare his defense.

> Fifth. To make it appear on the record with what particular offense the defendant was charged, for the purpose of review in case of conviction.
>
> Sixth. To so identify the offense that an acquittal or conviction may be pleaded in bar of a subsequent prosecution for the same offense.

Bishop says substantially the same thing on this point, section 519 et seq. He also cites and quotes to the same effect from 1 Stark. Crim. Pl., 2d ed., 68.

It is submitted that upon these rules the first counts in these two indictments were sufficient. They charged an offense; they charged it specifically; they charged it in broader terms than required by the statute, and charged it so that defendant was put fully upon the notice of the nature of the offense for which he was indicted, the particular person from whom he unlawfully took money, the particular time at which he did it, and the official capacity as officer of the United States in which he was acting at the time.

The next exception in assignment of error is based upon objection to the consolidation of the two indictments. *McElroy* v. *United States* (164 U. S., 76), cited by plaintiff in error, does not sustain the exception in this case. In the case cited McElroy, Bland, Henry Hook, Charles Hook, Stufflebeam, and Jennings were indicted for assault with intent to kill Elizabeth Miller, April 16, 1894. The same persons were also indicted for assault with intent to kill Sherman Miller on the same day, and the same persons were also indicted for arson on the dwelling house of Eugene Miller on May 1, 1894. Then three of the same defendants, viz, McElroy, Bland,

and Henry Hook, were indicted for the arson of the dwelling house of one Bruce Miller, April 16, 1894. These four indictments were consolidated by the court and tried at once. In the opinion in that case the court say:

> The consequence of this order of consolidation was that defendants Stufflebeam and Charles Hook were tried on three separate indictments against them and three other defendants, consolidated with another indictment against the other defendants for an offense with which the former were not charged, while an indictment for feloniously firing the dwelling house of one person on a certain day was tried with an indictment for arson committed a fortnight after in respect to the dwelling house of another person.

In the case at bar one of the alleged offenses is charged on the 18th day of September, 1895; the other, on the 6th day of November, 1895. The first offense is based upon the allegation that the defendant, by color of his office and contrary to the duties of his said office, at the port of San Francisco, did then and there, as such officer, wilfully, knowingly, corruptly, and feloniously, for the sake of gain, ask, demand, receive, extort, and take of one Wong Sam, a Chinese person, a certain sum of money, to wit, one hundred dollars, etc.

The count in the bill alleging an offense on the 6th day of November is in precisely the same words, except the charge is that he took $85 from Chan Ying, a Chinese person. The two acts or transactions are the same class of crimes or offenses and might properly have been joined in separate counts in the same bill of indictment. The accused was not confounded in the defense by the

union of the two offenses, and no substantial right was prejudiced. (*Pointer* v. *United States*, 151 U. S. 396.)

The next exception on which is based an assignment of error is the admission in evidence, under objection of the defendant, of the affidavit of defendant made by him in the case of *Isabella M. Williams* v. *Richard S. Williams*, pending in the superior court for the county of San Francisco. This is not only a declaration of the defendant, but it is a sworn declaration, and if it is pertinent to the inquiry it is admissible. The theory of the prosecution in this case was that the defendant was procuring money in considerable sums by the extortion from Chinese at the port of San Francisco, and the purpose of this testimony was to show that about the time of these alleged extortions the defendant, according to his own statement, had an unusual amount of money; that, considering his occupation, his situation, his estate, and his ability to earn money, he had an unreasonable amount, and that this was a circumstance to show that he came by that in the way alleged by the Government. (See affidavit, Rec., p. 33.)

The testimony upon which assignment of error No. 4 is based was introduced for the same purpose. This is evidence from the bank book of the San Francisco Savings Union, a banking corporation, to show the amounts of deposits made by defendant in said bank—in October, 1893, $350; November 18, 1895, $400; December 18, 1895, $550; and evidence from the Hibernia Savings and Loan Society, as shown by the bank book, of deposits in the name of Isabella M. Williams (who was the wife of defendant), as follows: September

10, 1895, $300; September 24, 1895, $150; October 8, 1895, $800; October 23, 1895, $700; December 2, 1895, $1,000. (See Rec., p. 34.)

This testimony was all admissible for the reasons before stated, viz, to show in the hands of the defendant at or about the time of the alleged offense an unusual and unreasonable amount of money. It was to show the possession of inculpatory things. It was to show a sudden and material change in the financial circumstances of the defendant indicating a recent receipt of money about the time of the commission of the offense in some other way than the course of his business. This sudden possession of considerable wealth, as shown by the affidavit and testimony, was competent to be taken as a circumstance and weighed in connection with other circumstances tending to show the defendant's guilt. (See Wharton's Crim. Evidence, 8th ed., § 762, and notes and cases cited under this section; see also Clark's Crim. Proc., p. 507; *Hackett* v. *King*, 8 Allen (Mass.), 144; *Boston and Worcester R. Co.* v. *Dana*, 1 Gray (Mass.), 83.)

The fifth exception (Rec., p. 35) is based upon an objection to the testimony of J. J. Tobin, a witness for the Government. This testimony was as to the reputation of defendant. (Defendant had been introduced as a witness in his own behalf.) In answer to the question as to whether witness knew what the general reputation of Williams was in the community prior to the 7th of April, 1896, witness answered: "Yes, sir; in the custom-house and among officials." He was then asked if it was good or bad.

Defendant's counsel suggested: "That is not general reputation."

The court said: "The question is, the general reputation of defendant in the community where he lives."

Counsel for defendant said: "Not among a particular class of people."

The prosecuting attorney said: "What people generally say about him."

The court at this juncture said: "Those who know him."

The witness then answered: "His general reputation is bad; that is, in that way."

Further on (Rec., p. 36) the witness, in answer to a question of the court as to whether he knew the general reputation of the defendant, answered, "Not outside of the custom-house," and witness then testified that "the defendant's reputation in the custom-house is bad." The custom-house was the community in which the defendant moved. They were the people among whom his reputation would be established. It was a community in itself. "Community" does not extend to society at large or the public or people generally. A community is a society of people having common rights or interests living under the same laws and regulations. "Reputation" is the opinion generally entertained of a person, derived from the common report of the people who are acquainted with him. (Am. & Eng. Encycl. of Law, vol. 3, 110.)

Assignment of error 6 is based upon the ruling of the court admitting certain testimony of Ling Yow, a witness introduced by the defendant, upon cross-examination by the Government. (Rec., p. 36.) This testimony,

beginning on page 36 and continuing on page 37 of the record, was upon cross-examination of defendant's witness by the counsel for the Government, and was of an impeaching character. The tendency of it was to show that this witness for the defendant had been convicted of perjury. This was competent as affecting the credibility of the witness before the jury. The witness admitted that he had been tried for perjury and convicted, but that subsequently the court granted him a new trial, and that he had not been retried. This was certainly testimony which could be properly elicited from the witness for the defense on cross-examination to be considered by the jury in connection with the testimony of the witness. This rule of evidence seems to be so well established that it is deemed unnecessary to cite authorities.

Assignment of error 7 is based upon a remark made by the district attorney (Rec., p. 35) while John H. Wise, a witness for the defense, was on the stand. By Wise the defendant proposed to prove that Williams had asked a certain case to be assigned to him in connection with the Chinese immigration, and the result. It was further proposed to show by Wise that on his return from Washington he assigned to Williams the investigation of Chinese female cases, and that while Mr. Williams was acting in that behalf there were more females sent back to China than were ever sent back before or after. The counsel for the Government at this point said:

> We object to that as being irrelevant. No doubt every Chinese woman who did not pay Williams was sent back.

To this the counsel for defendant objected and excepted.

In *Graves* v. *United States* (150 U. S., 118) the objectionable language used by the prosecuting officer was in the closing argument to the jury, and not a mere side remark (as in the present instance) in a colloquy between counsel. In the case referred to it is held that comments by the district attorney upon the facts not in evidence, or statements made having no connection with the case, or exaggerated expressions such as counsel in the heat of trial are prone to indulge in, will not necessarily vitiate a verdict, especially if they are not likely to be prejudicial to the accused. Upon objection by defendant's counsel to the remark of the district attorney in the present case, the subject was pursued no further. The remark was not in argument to the jury, nor any part of the discussion of the facts in the case, either to the court or to the jury, but a mere side remark in a colloquy between counsel.

The eighth assignment of error is based upon exceptions to particular parts of the charge of the court. (See Rec., pp. 40, 41, 42, 43.) In answer to this assignment the cases cited by the court below in the charge are called particularly to the attention of the court here, especially *Gulf C. & S. Ry. Co.* v. *Ellis*, 4 Circ. Ct. App., 661; *Blatch* v. *Arthur*, Comp., 63, 65; Starkie, Vol. 1, p. 54; *Commonwealth* v. *Webster*, 5 Cush., 295, 316; *People* v. *McWhorter*, 4 Barb., 438.

JAS. E. BOYD,
Assistant Attorney-General.

Counsel for Parties.

WILLIAMS *v.* UNITED STATES.

WILLIAMS *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Nos. 266, 267. Argued October 27, 1897. Decided November 29, 1897.

The illegal acts described in subdivisions 1 and 2 of Rev. Stat. § 3169, for the alleged violation of which the plaintiff in error was prosecuted, refer to offences committed by officers or agents acting under authority of revenue laws.

The Chinese Exclusion Acts have no reference to the subject of revenue, but are designed to exclude persons of a particular race from the United States, and an officer employed in their execution has no connection with the Government revenue system.

When an indictment properly charges an offence under laws of the United States, that is sufficient to sustain it, although the prosecuting representative of the United States may have supposed that the offence charged was covered by a different statute.

The transactions referred to in the two indictments were of the same class of crimes or offences, and there was no error in consolidating them at the trial.

The affidavit and the bank book referred to in the opinion of the court, were not admissible in evidence against the accused, as, on the face of the transactions, there was no necessary connection between them and the charges against him.

The estimate placed upon the character of a government employé by the community cannot be shown by proof only of the estimate in which he is held by his coemployés.

It was highly improper for the prosecuting officer to say in open court in the presence of the jury, under circumstances described in the opinion of the court, that while Mr. Williams was investigating the Chinese female cases, there were more females sent back to China than were ever sent back, before or after.

THE case is stated in the opinion.

Mr. George D. Collins for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendants in error.

Opinion of the Court.

MR. JUSTICE HARLAN delivered the opinion of the court.

By an indictment returned in the District Court of the United States for the Northern District of California, it was charged that the plaintiff, an officer of the Department of the Treasury, duly appointed and acting under the authority of the laws of the United States, and designated as Chinese inspector at the port of San Francisco, and by virtue of his office being authorized, directed and required to aid and assist the collector of customs of that port in the enforcement of the various laws and regulations relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States, "did then and there, as such officer, wilfully, knowingly, corruptly and feloniously, for the sake of gain and contrary to the duty of his said office and by color thereof, ask, demand, receive, extort and take of one Wong Sam, a Chinese person, a certain sum of money, to wit, one hundred dollars, which said sum of money was not due to him, the said Richard S. Williams," and which he was not, "by virtue of his said office, entitled to ask, demand, receive or take" — that is to say, that "on the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-five, there arrived at the port of San Francisco aforesaid from a foreign port or place, to wit, the port of Hong Kong, in the Empire of China, a male person of Chinese descent, to wit, one Wong Lin Choy, who claimed to the collector of customs that he was entitled to land, be and remain within the United States, on the ground that he was a native born of said United States; that thereafter such proceedings were had and taken before said collector of customs in accordance with law that the said Wong Lin Choy was by said collector of customs adjudged to be entitled to and permitted to land at said port as a native born of said United States of Chinese descent, and to be and remain in the said United States; that thereafter . . . on the eighteenth day of September, 1895, . . . the said Richard S. Williams corruptly and extorsively, for the sake of gain and contrary to the duty of his said office and under color thereof,

did extort, receive and take of said Wong Sam, who was then and there interested in the application or claim of said Wong Lin Choy as aforesaid, a sum of money, to wit, the sum of one hundred dollars as aforesaid, the said Richard S. Williams, under color of his said office, having previously, to wit, on the thirty-first day of August, 1895, at said city and county, State and district aforesaid, feloniously and corruptly obtained and exacted a promise from said Wong Sam for the payment thereof by him, to him the said Richard S. Williams, by then and there falsely and corruptly representing to the said Wong Sam that without the payment thereof to him, the said Richard S. Williams, the said Wong Lin Choy would not be permitted to land at said port, be or remain within the United States, but would be returned to said foreign port from whence he came, against the peace and dignity of the United States of America," etc.

A second count — describing the official character and duties of Williams as in the first count — charged that he wilfully and corruptly, and under color of his office did "take and receive of one Wong Sam, who was then and there interested in the claim of one Wong Lin Choy to be permitted to land at the port of San Francisco aforesaid, a sum of money, to wit, one hundred dollars, as and for a fee, compensation and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of the application of said Wong Lin Choy, who then and there claimed to the collector of customs of said port to be entitled to land at said port of San Francisco from a foreign port, to wit, the port of Hong Kong, in the Empire of China, and to be and remain in the United States under the claim that he was a native, born in the said United States, which said application was then and there pending and under investigation before said collector of customs as aforesaid, whereas in truth and in fact no fee, compensation or reward was then or at any other time due or owing from the said Wong Sam or any other person to the said Richard S. Williams for such service or any services of him, the said Richard S. Williams, in connection with said matter or at all, nor was he, the said

Richard S. Williams, entitled to the same by law, against the peace and dignity of the United States of America," etc.

A second indictment containing two counts was returned in the same court against the plaintiff in error, describing his official character and duties, and charging him in one count with having wilfully, knowingly, corruptly and feloniously, and in the second, with having wilfully and corruptly, under color of his office, taken from one Chan Ying, a Chinese person, the sum of eighty-five dollars, in consideration of his being permitted to come into and remain within the United States.

The record states that on the margin of each indictment was an indorsement in these words: "Sec. 3169, Rev. Stat. sub. 1 & 2, and sec. 23, act of Feb'y 8, 1875, vol. 1, 2d ed. Supp. Rev. Stat." This indorsement, it is contended, indicates the statutes under which the prosecutions were intended to be instituted.

A demurrer to each indictment having been overruled, the accused was duly arraigned in each case, and pleaded not guilty. The two cases were then, on motion of the Government, consolidated and tried together. The result was a verdict of guilty in each case. Judgment on the verdicts having been asked, the accused interposed a motion in arrest of judgment on the second count of each indictment, and also a motion for a new trial in each case. The first motion was sustained, and the second one having been overruled, the defendant was sentenced in each case to pay a fine of $5000, to be imprisoned for three years to date from September 22, 1896, and to be further imprisoned until the fine imposed on him was paid or until he should be otherwise discharged by due process of law.

The first question to be examined is whether these prosecutions are authorized by any existing statute of the United States. It was assumed by the learned judge who presided at the trial that the indictments were founded upon section 3169 of the Revised Statutes and section 23 of the act of February 8, 1875, c. 36, entitled "An act to amend existing customs and internal revenue laws, and for other purposes." 18 Stat. 307, 312.

Section 3169 of the Revised Statutes is part of Chapter I of Title XXXV, "Internal Revenue," and was brought forward from the act of July 20, 1868, c. 186, § 98, entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes." 15 Stat. 125, 165. By that section, which is given in full in the margin,[1] it is declared that "every officer

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[1] § 3169. Every officer or agent appointed and acting under the authority of any revenue law of the United States —

First. Who is guilty of any extortion or wilful oppression under color of law; or

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation or reward, except as by law prescribed, for the performance of any duty; or

Third. Who wilfully neglects to perform any of the duties enjoined on him by law; or

Fourth. Who conspires or colludes with any other person to defraud the United States; or

Fifth. Who makes opportunity for any person to defraud the United States; or

Sixth. Who does or omits to do any act with intent to enable any other person to defraud the United States; or

Seventh. Who negligently or designedly permits any violation of the law by any other person; or

Eighth. Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate or return; or

Ninth. Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to his next superior officer and to the Commissioner of Internal Revenue; or

Tenth. Who demands, *or accepts, or attempts to collect*, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment or settlement of any charge or comp[illegible]int for any violation or alleged violation of law, except as expr[illegible]ay authorized by law so to do, shall be dismissed from office, and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court.

or agent appointed and acting under the authority of any revenue law of the United States, first, who is guilty of any extortion or wilful oppression under color of law, or, second, who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation or reward, except as by law prescribed, for the performance of any duty, . . . shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court."

Section 23 of the above act of February 8, 1875, provides: "All acts and parts of acts imposing fines, penalties or other punishment for offences committed by an internal revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever, employed, appointed or acting under the authority of any internal revenue or customs law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money."

We are of opinion that these prosecutions cannot be sustained under the above statutes. The words "extortion or wilful oppression under color of law," and the knowingly demanding "other or greater sums than are authorized by law," or the receiving "any fee, compensation or reward, except as by law prescribed, for the performance of any duty" — illegal acts described in subdivisions one and two of section 3169 of the Revised Statutes — refer to offences committed by officers or agents "appointed and acting under the authority of any *revenue* law of the United States." The accused, in his capacity of Chinese inspector, did not act under any law that could properly be regarded as a revenue law. He was ap-

pointed pursuant to acts of Congress appropriating money to be used by the Treasury Department "to prevent unlawful entry of Chinese into the United States, by the appointment of suitable officers to enforce the laws in relation thereto, and for expenses of returning to China all Chinese persons found to be unlawfully within the United States." 26 Stat.: August 30, 1890, c. 837, pp. 371, 387; March 3, 1891, c. 542, pp. 948, 968; 27 Stat.: March 3, 1893, c. 208, pp. 572, 589; 28 Stat.: March 12, 1894, c. 37, p. 41; August 18, 1894, c. 301, pp. 372, 390; January 25, 1895, c. 43, pp. 636, 637; March 2, 1895, c. 187, pp. 843, 846; March 2, 1895, c. 189, pp. 910, 932; 29 Stat.: June 11, 1896, c. 420, pp. 413, 431. The Chinese Exclusion Acts have no reference to the subject of revenue, but are designed to exclude persons of a particular race from the territory of the United States. Clearly, Chinese inspectors, proceeding under the acts providing for their appointment, have no connection with the revenue system of the Government, although the execution of the acts referred to is committed to the Treasury Department.

Nor can the prosecutions be sustained under the twenty-third section of the act of February 8, 1875. That section does nothing more than subject persons employed, appointed or acting under the authority "of any internal revenue or customs law, or any revenue provision of any law of the United States," to the same fines, penalties or other punishment for offences committed by an internal revenue officer or other officer of the Treasury, or under any bureau thereof. The words, "internal revenue or customs law," do not include the statutes providing for the exclusion of Chinese persons from this country.

But there is a statute under which, in our judgment, a Chinese inspector, guilty of extortion under color of his office, can be prosecuted and subjected to fine and imprisonment. It is section 5481 of the Revised Statutes, providing that, "Every officer of the United States who is guilty of extortion under color of his office shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than one year, except those officers or agents of the United States other-

wise differently and specially provided for in subsequent sections of this chapter."

It is said that these indictments were not returned under that statute, and that the above indorsement on the margin of each indictment shows that the District Attorney of the United States proceeded under other statutes that did not cover the case of extortion committed by a Chinese inspector under color of his office. It is wholly immaterial what statute was in the mind of the District Attorney when he drew the indictment, if the charges made are embraced by some statute in force. The indorsement on the margin of the indictment constitutes no part of the indictment and does not add to or weaken the legal force of its averments. We must look to the indictment itself, and if it properly charges an offence under the laws of the United States, that is sufficient to sustain it, although the representative of the United States may have supposed that the offence charged was covered by a different statute.

That the first count of each indictment makes a case of extortion under color of office, within the meaning of section 5481, is too clear to admit of dispute. The court below, therefore, while erroneously adjudging that the prosecutions were embraced by section 3169 of the Revised Statutes and the above act of February 8th, 1875, did not err in overruling the demurrer to the first count of the respective indictments. We say nothing as to the second count in either indictment, because judgment on that count was arrested, and that action of the court is not subject to review on this writ of error. *United States* v. *Sanges*, 144 U. S. 310.

It is proper also to observe that there was error in the judgment as to the fine and imprisonment imposed upon the accused. Section 5481 of the Revised Statutes provides that the fine should not exceed $500, nor the imprisonment more than one year. If this were the only error complained of, the result would not be an entire failure of the prosecutions, for it would only be necessary for the court below to enter a new judgment, imposing such fine or imprisonment, or both, as the statute permitted.

But other errors are assigned relating to the conduct of the trial. They must be examined, because if any of them affect the substantial rights of the accused, a new trial must be the result in each case.

It is assigned for error that the District Court consolidated the two cases, and tried them at the same time and by the same jury. This objection is without merit. By section 1024 of the Revised Statutes it is provided: "When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offences, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated." The accused having been charged with different acts or transactions "of the same class of crimes or offences," it is scarcely necessary to say that the transactions referred to in the indictments, being of the same class of crimes, could properly, that is, consistently with the essential principles of criminal law, be joined in one indictment against a single defendant without embarrassing him or confounding him in his defence. *Pointer* v. *United States*, 151 U. S. 396, 400. The plaintiff in error cites *McElroy* v. *United States*, 164 U. S. 76, as sustaining his objection to the consolidation. This is a misapprehension. The inquiry in that case was "whether counts against five defendants can be coupled with a count against part of them, or offences charged to have been committed by all at one time can be joined with another and distinct offence committed by part of them at a different time." It was held that the statute did not authorize that to be done. The Chief Justice, speaking for the court, said: "It is clear that the statute does not authorize the consolidation of indictments in such a way that some of the defendants may be tried at the same time with other defendants charged with a crime different from that for which all are tried." Here, the indictments were against the same person, the offences charged were of the same kind, were

provable by the same kind of evidence, and could be tried together without embarrassing the accused in making his defence.

If the offences could be joined in one indictment, it would follow, under the statute, that separate indictments could, in the discretion of the court, be consolidated and tried at the same time and before the same jury. Nothing in the record shows that the consolidation of these cases worked or could have worked any prejudice to the defendant.

At the trial below the Government read in evidence, over the objections of the accused, his affidavit filed in a divorce suit brought against him by Isabella M. Williams in the Supreme Court of San Francisco. That affidavit, made June 1, 1896, was as follows: "I have read the affidavit of plaintiff in reply on her motion for alimony, etc., and in reply thereto I desire to say it is untrue that prior to the time I entered the employment of the United States Government I was without means and had had no money for quite a time before, or that I had to borrow money to pay my living expenses. On the contrary, when I entered the employment of the United States Government, on or about the 28th day of September, 1893, I was worth more money then than I am at the present time, being worth about $5000, and since then having inherited some property; that the $3000 referred to in said affidavit was not acquired by me during the time I was in the employment of the United States Government, as set forth in said affidavit, but is a portion of the $5000 heretofore referred to. The statement in said affidavit that I have in my possession or had in my possession, in addition to the said sum of $3000 aforesaid, the sum of $5000 instead of $4000, is false and untrue; that, to my knowledge, plaintiff was not in the habit of carrying said sum of $5000 in the bosom of her dress. On the contrary, there was on deposit in the Hibernia Savings and Loan Society in her name, belonging to me, the sum of about $4000, which was a part of the $5000 possessed by me at the time I entered the employment of the United States Government. The $3000 in bank referred to is a portion of said sum so deposited in the name of plaintiff in the Hibernia

Savings and Loan Society. In answer to the statement contained on page 2 of said affidavit, to the effect that plaintiff paid for the piano therein referred to and the bill therefor was made out in her name, I simply desire to annex the bill for said piano to this affidavit, showing the bill to be made out in the name of R. S. Williams. The property at Nos. 420 and 422 Scott street, mentioned on page 2 of said affidavit, was acquired by my stepfather, Henry Monsferran, now deceased. He was a foreigner, unaccustomed to speaking the English language, and the details of the purchase were made by me, but the money that paid for said property was solely and exclusively the money of the said Henry Monsferran. The deed to the property was taken in his name. It is untrue that at the time plaintiff left our residence on the 29th day of April, 1896, she left said sum of $5000 in greenbacks. On the contrary, as above stated, there was no such sum, and the money referred to by her as having been drawn from the Hibernia Savings and Loan Society is $3000, so deposited in the savings bank. It is untrue, as stated in said affidavit, that I avoided the service of the summons and complaint in this action, or that by reason thereof plaintiff incurred an expenditure of $11.25."

It is stated in the bill of exceptions that, independently of that affidavit, there was no evidence whatever before the court relative to the matters therein referred to except certain bank books offered and read in evidence over the objections of the accused.

The bill of exceptions states that at the trial the prosecution offered in evidence a book of the deposit of moneys in the San Francisco Savings Union, a banking corporation of the State of California, which book and deposits were in the name of the defendant; also a book of the deposit of moneys in the Hibernia Savings and Loan Society, a banking corporation of the State of California, which latter book and deposits were in the name of Isabella M. Williams. The deposits in the San Francisco Savings Union, as evidenced by the book first mentioned, were as follows: October 29, 1893, $350; November 18, 1895, $400; December 17, 1895, $550, making a total

of $1300. The deposits in the Hibernia Savings and Loan Society, as evidenced by the bank book in the name of Mrs. Williams, were as follows: September 10, 1895, $300; September 24, 1895, $150; October 8, 1895, $800; October 23, 1895, $700; December 2, 1895, $1000, making a total of $3450.

It is stated in the bill of exceptions that these bank books and affidavit were the only evidence before the court relative to such deposits, and that there was no evidence indicating the existence of any privity or relation between the defendant and Mrs. Williams at the time the above deposits were made by her or at any other time, except as indicated in the above affidavit.

It may be also observed that when the affidavit and bank accounts were offered in evidence, no suggestion was made that the prosecution would at some stage of the trial show that the sums alleged to have been received by the accused under color of his office were part of any sum referred to in the affidavit and bank books.

The defendant duly excepted to the action of the court in allowing the affidavit and bank books to be read in evidence.

The manner in which the trial court dealt with this evidence appears from the following extracts from its instructions to the jury:

"There has been some testimony in support of the allegations of these indictments respecting the pecuniary condition of the defendant, and also testimony as to the extent of his compensation by the Government for services. This evidence was admitted in compliance with a well-known rule which establishes the relevance of evidence of this character where the charge is such as that alleged in these indictments. If the salary of the defendant, during the time alleged in the indictments and before then, was four or five dollars per day, and if the testimony shows to your satisfaction that he has deposited in bank or there was deposited to his credit in bank in the neighborhood of $4750 from September 10 to December 17, 1895, alleged in the indictments, then such testimony may be considered by you with a view of ascertaining how or by what means the defendant obtained that amount of

money at a time when his compensation by the Government, as is claimed by the prosecution, was not to exceed about $150 per month. Where did he get such large sums of money? From what source other than the source named in the indictments did he acquire this money? Has he furnished evidence explaining to your satisfaction the possession of these sums of money? These are all questions which you will consider, and if any explanation made by the defendant as to how he came by this money seems incredible, irrational and unsatisfactory you are at liberty to reject it and to act upon the other testimony in the case. If, after doing all this, you feel to a moral certainty and beyond a reasonable doubt that he took the money, as alleged in the indictments, then your verdict should be guilty. In reference to the testimony which has been introduced in the case showing the pecuniary condition of the defendant, that if testimony explaining how, when and by what means the defendant acquired possession of the sums of money shown to have been deposited in the San Francisco Savings Union and Hibernia bank could have been offered by defendant, and he failed to produce such testimony, then such failure may very properly be taken into consideration by the jury in determining the defendant's guilt or innocence. Where probable proof is brought of a state of facts tending to criminate the accused, the absence of evidence tending to a contrary conclusion may be considered, although this attitude of the case alone would not be entitled to much weight, because the burden of proof lies on the prosecution to make out the whole case by sufficient evidence; but when proof of inculpating circumstances had been produced tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and show, if such was the truth, that the suspicious circumstances can be accounted for consistently with his innocence, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting, would tend to sustain the charges. Therefore, if in this case the defendant could have produced testimony explaining his several deposits in the San Francisco Savings Union and the

Hibernia bank during the months of September, October, November and December, 1895, and has failed to produce such testimony, then you are at liberty to infer that any explanation in his power to make would have been, if made, adverse and prejudicial to the defence."

After referring to some authorities announcing the general rule that a party in omitting to produce evidence in elucidation of the subject-matter in dispute which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasion for the presumption that such evidence, if adduced, would operate to his prejudice, and after referring to the affidavit made by Williams in the divorce suit, the court proceeded in its instructions: "It is the duty of the jury to ascertain from said affidavit and from the other testimony in the case what portions of the same are true. The jury is then at liberty to believe one part of it and to disbelieve the other part. Such affidavit was introduced upon the theory that it constituted an admission on the part of the defendant as to his ownership of certain funds referred to therein. The defence then insisted, as they had a right to, that the entire affidavit should be read. The whole of it is now before you, and it is for you to determine, from all of the circumstances of this case, the situation of the defendant, and all of the evidence that has been introduced, as to what portion of said affidavit, if any, is true. You are at liberty to believe or reject such portions of it as you think may be worthy of belief or disbelief. In this respect I call your attention to the deposits as they were made. . . . These deposits were made, as you will observe, at different times. In September he appears to have deposited the sum of $450; in October he deposited $1650; in November he deposited $1100, and in December, up to the 17th, he deposited $1550, making a total, as I said, of $4750; nine deposits in three months and seventeen days. Does the defendant's affidavit satisfactorily explain or account for the receipt of these sums of money?"

We are of opinion that the affidavit and the bank books were not admissible in evidence against the accused. There

was nothing before the jury in respect of the matters referred to in the affidavit except the affidavit itself, and nothing relating to the deposits except that disclosed by the affidavit and the bank books. Taking the case to be as presented by the bill of exceptions, the utmost the evidence tended to show was that the accused had in his possession at different times certain sums that were deposited by him in bank to his credit or to the credit of his wife. It is to be observed that no sum so deposited corresponded in amount with the sums which he was charged with having extorted under color of his office as Chinese inspector. Upon the face of the transactions referred to there was no necessary connection between the deposits and the specific charges against the defendant. And yet the jury were in effect told that the failure of the accused to explain how he came by those sums, aggregating nearly five thousand dollars, was a circumstance tending to show that if he had given that explanation it would have operated to his prejudice in meeting the particular charges against him, of extorting at one time $100, and at another $85, under color of his office. There was no such connection shown between the possession by the defendant of the sums specified in the affidavit and bank books, and the alleged extortion by him of two named sums from certain persons, under color of his office, as required him to explain how he acquired the moneys referred to in the affidavit and bank books. The manifest object and the necessary effect of this evidence was merely to give color to the present charges, and to cause the jury to believe that the accused had in his possession more money than a man in his condition could have obtained by honest methods, and, *therefore*, he must be guilty of extorting the two sums in question. The present case does not come within the rule of evidence referred to by the learned court. The jury may have been unable to say from the evidence where the defendant obtained the moneys deposited in bank and specified in the bank book, aggregating $4750 between certain dates. But that did not justify the conclusion that he had, under color of his office as Chinese inspector, extorted one hundred dollars upon one occasion and eighty-

five dollars upon another occasion. The accused was entitled to stand upon the presumption of his innocence, and it cannot be said from anything in the present record that he was under any obligation arising from the rules of evidence to explain that which did not appear to have any necessary or natural connection with the offence imputed to him. In our judgment the court, under the circumstances disclosed, erred in not excluding the affidavit and bank books as evidence, as well as in what it said to the jury on that subject.

Another assignment of error relates to the admission, against the objection of the defendant, of certain evidence as to character. A witness called by the prosecution was permitted to testify that the defendant's reputation "in the custom house" was bad, although he had distinctly stated, upon preliminary examination, that he did not know the general reputation of the accused "outside of the custom house." This was error. Assuming (although the record is silent on the subject) that the accused introduced evidence of his general reputation for integrity, it is clear that evidence, on behalf of the prosecution, that among the limited number of people employed in a particular public building his character was bad, was inadmissible. The prosecution should have been restricted to such proof touching the character of the accused as indicated his general reputation in the community in which he resided, as distinguished from his reputation among a few persons in a particular building. The estimate placed upon his character by the community generally could not be shown by proof only as to the estimate placed upon him by persons in the custom house.

Another assignment of error deserves to be noticed. One of the witnesses for the defence was the collector of customs for the port of San Francisco. He was asked to whom, upon his return from Washington, was assigned the investigation of female cases. The court having inquired as to the purpose of this testimony, the attorney for the accused said: "It has been sworn to by Mr. Tobin that Mr. Williams asked for certain cases to be assigned to him and show the result. We propose to show by Mr. Wise that on his return from Wash-

ington he assigned to Williams the investigation of Chinese female cases, and while Mr. Williams was acting in that behalf there were more females sent back to China than ever were sent back before or after." The representative of the Government objected to this evidence as irrelevant, saying, in open court, and presumably in the hearing of the jury, "no doubt, every Chinese woman who did not pay Williams was sent back." The attorney for the accused objected to the prosecutor making any such statement before the jury. The court overruled the objection, and the defendant excepted. The objection should have been sustained. The observation made by the prosecuting attorney was, under the circumstances, highly improper, and not having been withdrawn, and the objection to it being overruled by the court, it tended to prejudice the rights of the accused to a fair and impartial trial for the particular offences charged.

For the several errors committed at the trial, to which we have referred, the judgment is reversed in each case, with directions to grant a new trial.

MR. JUSTICE BREWER did not hear the argument in this case and did not participate in the decision.

MR. JUSTICE BROWN concurred in the result.